Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 74-1254

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION AFL-CIO
AND MARITIME LOCAL
UNION No. 8-801

Petitioners,

v.

MOBIL OIL CORPORATION

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 4, 1975; CERTIORARI GRANTED OCTOBER 6, 1975.

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APPENDIX

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

9/16/71 Filed Plaintiff's Original COMPLAINT; issued summonses and delivered to U.S. Marshal with $25 check for Marshal's fees.

9/17/71 Filed Marshal's Return on Summons: Served J. Elro Brown, 1500 Jefferson Drive, Port Arthur, Texas, Office; 3101 11th Street, Port Arthur, Texas, Home, September 16, 1971.

9/20/71 Filed Marshal's Return on Summons: Served Ivan B. Haven, 1500 Jefferson Drive, Port Arthur, Texas, Office; 1021 Washington, Port Neches, Texas, Home, September 17, 1971.

9/20/71 Filed Marshal's Return on Summons: Served John D. Perrio, 6101 Edgemoor Drive, Houston, Texas 77036, September 17, 1971.

10/ 6/71 Filed Defendants' Motion to Enlarge the Time to Answer or Plead.

10/ 8/71 Filed Plaintiff's Objection to Defendants' Motion to Enlarge Time to Answer or Plead.

10/ 9/71 Filed Defendants' Motion to Dismiss.

10/ 8/71 ORDER ENLARGING TIME TO ANSWER OR PLEAD signed by Judge Fisher and filed, grants extension to October 27, 1971, to answer

or otherwise plead to the complaint in the above case. Attorneys notified by copies of Order.

10/13/71 Filed Plaintiff's Objections to Defendants' Motion to Dismiss, and Memorandum of Authorities.

10/25/71 ORDER DENYING DEFENDANTS' MOTION TO DISMISS, signed by Judge Fisher and filed. Attorneys notified.

11/ 3/71 Filed DEFENDANT'S ANSWER.

2/ 4/72 Filed Plaintiff's Motion for Summary Judgment.

2/11/72 Filed REQUEST for Extension of Date for Submission of Plaintiff's Motion for Summary Judgment.

2/16/71 ORDER, signed by Judge Fisher and filed, ordered the submission date for Plaintiff's Motion for Summary Judgment and Defendants' controverting materials is hereby reset to March 10, 1972. Attorneys notified.

3/10/72 Filed Defendants' Opposition to Plaintiff's Motion for Summary Judgment.

3/30/72 Filed Plaintiff's MOTION for Leave to File Supplemental Affidavit and Memorandum in Support of Motion for Summary Judgment.

3/30/72 Filed ORDER signed by Judge Fisher GRANTING Plaintiff's MOTION to File Supplemental Affidavit and Memorandum in Support of Motion for Summary Judgment.

3/30/72 Notified Counsel.

4/ 7/72 ORDER, signed by Judge Fisher and filed, denied motion of Plaintiff for summary judgment. Attorneys notified.

6/26/72 Filed PRE-TRIAL STIPULATION and ORDER signed by Judge Fisher. Counsel Present.

6/26/72 Trial Begins, 10:20 A.M.

6/27/72 Trial in 2nd Day. Trial Ends 2:00 P.M. Counsel given until July 10, 1972, to prepare Proposed Findings of Fact and Conclusions of Law to be submitted direcly to Court.

7/10/72 Filed Defendants' Proposed Findings of Fact and Conclusions of Law.

7/10/72 Filed Defendants' MEMORANDUM Re Proposed Findings and Conclusions.

7/10/72 Filed Plaintiff's BRIEF in Support of Motion for Judgment.

7/10/72 Filed Plaintiff's SUPPLEMENTAL MEMORANDUM.

7/12/72 MEMORANDUM WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW, signed by Judge Fisher and filed.

7/12/72 JUDGMENT signed by Judge Fisher and filed, that Article 1, 2b of collective bargaining agreement, dated 11-1-69, with reference that as condition of employment all employees become

members of Union, VOID & UNENFORCEABLE: that Article 1, 2b, is severable from remainder of bargaining agreement, and does not affect other provisions in contract; and that costs are taxed against defendant.

7/12/72 Certified copies mailed all counsel of record and to Judge Fisher.

7/24/72 Filed Defendants' Motion for New Trial and Amendment of Judgment and MOTION for Amended and Additional Findings.

7/31/72 Filed Plaintiff's OBJECTIONS to Defendants' Motion for New Trial and Amendment of Judgment and Findings.

8/14/72 Filed ORDER signed by Judge Fisher DENYING Defendants' MOTION for New Trial, GRANTING an Additional Finding of Fact and AMENDING a Conclusion of Law.

8/15/72 Filed Court Reporter's Transcript of Proceedings.

9/13/72 Filed NOTICE OF APPEAL to U.S. Court of Appeals, Fifth Circuit, by Defendant, OCAW International Union, et al from Judgment entered on July 12, 1972 and Order overruling Motion for New Trial by Defendant on August 14, 1972.

9/13/72 Certified copy of Notice of Appeal mailed to Appellant, Mr. Chris Dixie, Houston, Texas; Fifth Circuit Court of Appeals, New Orleans,

Louisiana; Mr. James W. Hambright, Appellee, Beaumont, Texas; and U.S. Court Reporter, Beaumont, Texas, with transmittal letter.

9/13/72 Filed APPEAL BOND by Defendant, Mr. Chris Dixie, Houston, Texas in the sum of $250.00 (Lawyers Surety Corporation).

8/10/73 Opinion of Court of Appeals entered.

11/8/74 Opinion of Court of Appeals *en banc* entered.

4/4/75 Petition for Certiorari Filed.

10/6/75 Order Granting Certiorari Issued.

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

C. A. No. 7413

MOBIL OIL CORPORATION, MARINE TRANSPORTATION DEPARTMENT, GULF-EAST COAST OPERATIONS

vs.

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION AFL-CIO AND MARITIME LOCAL NO. 8-801 OF OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION AFL-CIO

PLAINTIFF'S ORIGINAL COMPLAINT

(Filed: September 16, 1971)

COME NOW Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations, hereinafter called Plaintiff, complaining of Oil, Chemical and Atomic Workers International Union AFL-CIO and also Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union AFL-CIO, herinafter called Defendants, and would show as follows:

1.

Plaintiff, an operating division of said Department of said Corporation, has its management headquarters and principal place of business located in an office building on the premises of the Mobil Refinery in Jefferson County, Texas, and its mailing address is P.O. Box 3444, Beaumont, Texas 77704. Mobil Oil Corporation is incorporated under the laws of the State of New York and has a valid and subsisting permit to do business in Texas.

Defendant Oil, Chemical and Atomic Workers International Union, AFL-CIO, is a labor organization with its principal headquarters in Denver, Colorado, but does business and represents its members in Jefferson County, Texas, and may be served by service of process upon its International Representatives who reside in said County, one being J. Elro Brown whose office address in 1500 Jefferson Drive, Port Arthur, Texas, and home address is 3101 11th Street, Port Arthur, Texas, and another being Ivan B. Haven whose office address is 1500 Jefferson Drive, Port Arthur, Texas, and home address is 1021 Washington, Port Neches, Texas.

Defendant, Maritime Local No. 8-801 of said Oil, Chemical and Atomic Workers International Union, AFL-CIO (formerly known as Socony Vacuum Tanker Men's Association) is a labor organization doing business and representing its members in Jefferson County, Texas, and maintains an office located in Room 201 Goodhue Building, Beaumont, Jefferson County, Texas, where it may be served by delivering process to its officer or agent at such address and may also be served by service upon its president, John D. Perrio, a resident of Houston, Harris County, Texas, whose address is 6101 Edgemoor Drive, Houston, Texas 77036, and by service upon its officer, Clinton W. Weeks, a resident of San Augustine County, Texas, whose residence and address is Route 1, Box 208-B, San Augustine, Texas 75972.

2.

The Court has jurisdiction of this cause in that the case is brought under Sec. 301 of the Labor Management Relations Act of 1947 as amended, 29 U.S.C. § 185(a) and (c) for the purpose of securing a declaratory judgment pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.

3.

Plaintiff and Defendants are parties to a labor contract dated November 1, 1969, and not expiring until July 31, 1972. Such contract covers many of Plaintiff's employees who are represented by Defendants as their collective bar-

gaining representatives for purposes of wages, hours and working conditions.

4.

In its Union security provisions said labor contract contains what is commonly referred to as an agency shop clause which requires and compels membership or payment of regular Union dues and initiation fees by all employees in the bargaining unit represented by said Defendants.

5.

Said agency shop clause is unlawful under the Right-to-Work laws of the State of Texas. Plaintiff seeks a declaratory judgment that such contract provisions are therefore invalid and unenforceable.

6.

Said labor contract provides that in the event any provision thereof shall be declared invalid by any court of competent jurisdiction all other provisions of the contract shall remain in full force and effect. Plaintiff seeks declaratory judgment that except for said provisions unlawful under Texas law the remainder of the labor contract is in full force and effect.

7.

An actual controversy exists between Plaintiff and Defendants in that Plaintiff has advised Defendants that the subject clause is unlawful and Plaintiff has advised its employees that Union membership is voluntary, but the Defendants have rejected such position and have recently issued a written notice to Plaintiff's employees dated July 1971 threatening that Union membership or payment of Union dues is a condition of their employment because of such contract clause and that Defendants will cause any non-complying employee to be fired.

WHEREFORE, premises considered, Plaintiff prays that

Defendants be cited to appear and answer herein, that said agency shop portion of the labor contract be declared unlawful, invalid, and unenforceable, that the remainder of the contract be declared in full force and effect, that it have judgment for its costs, and for such other relief as it may be entitled to receive.

Respectfully submitted,

WARREN H. GREENE, JR.
150 E. 42nd Street
New York, New York 10017

OBGAIN, BELL & TUCKER
By /s/ JAMES W. HAMBRIGHT
Beaumont Savings Bldg.
Beaumont, Texas 77701

Attorneys for Plaintiff

DEFENDANTS' MOTION TO DISMISS

(Number and title omitted) (Filed: October 8, 1971)

Defendants, Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, being all Defendants in the above cause, move to dismiss the complaint in the above case for the following reasons:

I.

This Court lacks subject matter jurisdiction of this case because this is not an action to enforce a contract under Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C.A. Section 185.

II.

The matters to which the complaint is addressed are within the exclusive jurisdiction of the National Labor Relations Board.

III.

The complaint fails to state a claim upon which relief can be granted.

DIXIE, WOLF & HALL

By /s/ CHRIS DIXIE
Chris Dixie
Suite 401, 609 Fannin
St. Bldg.
Houston, Texas 77002
713/223-4444

Attorneys for Defendants

PLAINTIFF'S OBJECTIONS TO DEFENDANTS' MOTION TO DISMISS, AND MEMORANDUM OF AUTHORITIES

NOW COMES Plaintiff Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations and objecting to motion to dismiss filed herein by Defendants Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, would respectfully show as follows:

1.

Defendants say that this is not a Section 301 action to enforce a contract and that the Court lacks jurisdiction. Such contention is without merit. It is well settled that declaratory judgment actions on labor contracts are cognizable by the courts under Section 301 of the LMRA, 29 U.S.C. § 185(a) and (c). Plaintiff's business is in interstate commerce, both Defendants are labor organizations, there is a labor contract between the parties, and Plaintiff seeks that part of it be cancelled and the rest of it enforced. There is no question of the Court's jurisdiction. Unions have frequently brought Section 301 suits to declare their rights under labor contracts, and so have employees, sometimes seeking reformation and other ancillary orders. A typical federal court Section 301 suit brought by a union seeking declaratory judgment as to validity of a portion of a labor contract is *Amalgamated Assoc. of Street Electric Railway & Motor Coach Employees, Div. 1225* v. *Las Vegas—Tonopah—Reno Stage Line, Inc.* 202 F. Supp. 726 (U.S.D.C., Nev. 1962) affirmed at 319 F.2d 783 (9th Cir. 1963). A federal court Section 301 suit brought by an employer seeking declaratory judgment and in the alternative reformation of the labor contract is *West Coast Telephone Co.* v. *Local Union No. 77, International Brotherhood of Electrical Workers, AFL-CIO* 431 F.2d 1219 (1970).

2.

Defendants next contend that the case is within the exclusive jurisdiction of the National Labor Relations Board. Such contention is without merit. Many cases have held that the courts have jurisdiction of Section 301 suits even though the case disclosed certain facts which were not only arguably, but concededly, an unfair labor practice. *Smith* v. *Evening News Association*, 371 U.S. 195, 83 S.Ct. 267, 9 L.E.2d 246, 51 LRRM 2646 (1962). *Vaca* v. *Sipes*, 386 U.S. 171, 87 S.Ct. 903, 64 LRRM 2369 (1967). In the *Smith* case the United States Supreme Court specifically held that the authority of the National Labor Relations Board "does not destroy the jurisdiction of the courts under Section 301."

3.

Finally, Defendants contend that the Complaint fails to state a claim upon which relief can be granted. This contention is without merit, and amply answered by the authorities cited under paragraph 1 above.

WHEREFORE, premises considered, Plaintiff prays that Defendants' motion to dismiss be denied.

Respectfully submitted,

WARREN H. GREENE, JR.
150 E. 42nd Street
New York, New York 10017

ORGAIN, BELL & TUCKER
By /s/ JAMES W. HAMBRIGHT
James W. Hambright
Beaumont Savings Bldg.
Beaumont, Texas 77701

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, James W. Hambright, attorney for Plaintiff Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations, hereby certify that service of the above Plaintiff's Objections to Defendants' Motion to Dismiss, and Memorandum of Authorities was made upon Chris Dixie, Dixie, Wolf & Hall, Suite 401, 609 Fannin St. Bldg., Houston, Texas 77002, attorney for Defendants Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, on the 12th day of October, 1971, by depositing true copy of same in the United States mail, postage prepaid, in an envelope addressed to him at the address shown above.

/s/ JAMES W. HAMBRIGHT
James W. Hambright

—ooo—

ORDER DENYING DEFENDANTS' MOTION TO DISMISS

(Number and title omitted) (Filed: October 25, 1971)

BE IT REMEMBERED that in the above styled cause came on to be considered motion to dismiss filed herein by Defendants Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, and the Courts having duly heard and considered same, along with Plaintiff's objections thereto, and memorandum of authorities, it is therefore ordered that said motion to dismiss be and the same is hereby in all things denied.

Rendered and signed this *25th* day of *October*, 1971.

/s/ JOE J. FISHER
Judge Presiding

DEFENDANTS' ANSWER

(Number and title omitted) (Filed: November 3, 1971)

Now Comes Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Oil Chemical and Atomic Workers International Union, AFL-CIO, and answer the Complaint as follows:

I.

Defendants deny that the "Maritime Transportation Department, Gulf-East Coast Operations" is such an entity as can be a plaintiff herein separate from Mobil Oil Corporation, a New York corporation. Upon information and belief, Defendants also deny that the management headquarters and principal place of business of any appropriate legal entity is located in Jefferson County, Texas. Upon information and belief, Defendants show the Court that the top management headquarters, certain labor relations officials and other personnel responsible for the administration of the collective bargaining contract are located in the State of New York.

The second unnumbered paragraph of paragraph I of the Complaint is admitted.

The third unnumbered paragraph of paragraph I is denied to the following extent: Defendant Local No. 8-801 is a labor organization which does business and represents its members in several states, particularly in the State of New York, as in Jefferson County, Texas. Its members work on the high seas and at times in most of the ports of the East Coast of the United States. Defendant Local Union maintains its main office in the State of New York at 1 Beekman Street where it maintains its financial records, and receives the proceeds from check-off of dues transmitted to it by Mobil Oil Corporation. Defendant Local Union is certified as a representative of the unlicensed personnel in the deck, engine, and stewards departments of

the ocean going vessels operated by Plaintiff under the flag of the United States. The contract which constitutes the basis of this suit was negotiated and executed in the State of New York and is performable in that state, as well as many other states, including the State of Texas. Defendant Local Union is administratively a part of the International Union's District No. 8 and is not administratively a part of the International Union's District No. 4. District 8 is located in New York State and the East Coast. District No. 4 is located in parts of the States of Texas and Louisiana. The collective bargaining contract here involved is performed mostly upon the high seas and in states other than the State of Texas. The relative percentage of the working time of the employees in question in the territorial limits of the State of Texas is relatively minor. Except as stated above, Defendant Local Union admits that it does have an office located in Beaumont, Texas, as alleged.

II.

The jurisdiction of the Court is denied.

III.

Paragraph No. III of the Complaint is admitted.

IV.

Defendants admit paragraph IV of the Complaint.

V.

Defendants deny that the clause in question is unlawful under the right-to-work laws of the State of Texas. Defendants deny that Plaintiff has standing to seek a declaratory judgment, that such contract provisions are invalid and unenforceable, respectfully showing the Court that the agency shop clause affects only covered employees and their money. It affects no funds or operating conditions or other legitimate interests of the Plaintiff. In this connec-

tion, Defendants show the Court that Plaintiff executed the said contract in the State of New York with full knowledge of the nature of its operations and the location of its employees' work. Plaintiff agreed to the clause in question as a part of many mutual agreements, covenants and concessions by the parties to each other. Plaintiff has taken the benefit of the covenants and concessions made by Defendants and does not have standing to challenge said clause before this Court.

VI.

Defendants admit the substance of paragraph VI but deny that said clause authorizes or gives standing to Plaintiff to invalidate the agency shop clause to which it agreed. Furthermore, the clause provides that the parties will, in the event of invalidation by a court of competent jurisdiction, meet within ten days to attempt to work out a new contract on those matters that were invalidated. It was and is, therefore, the sense of said contract that both parties will develop any new agreement which is necessary and appropriate to accomplish the purposes of the agency shop clause.

VII.

Defendants deny that an actual controversy exists within the meaning of the Declaratory Judgment Act or that the matters alleged in paragraph VII of the Complaint constitute such an actual controversy.

AFFIRMATIVE DEFENSES

The collective bargaining contract in question has been entered into under the requirements and auspices of the Labor-Management Relations Act of 1947, as amended, an Act of Congress regulating interstate commerce. The contract was executed following a nationwide strike of the employees in question in the year 1969. At the time of the strike Defendant Local Union was certified as the exclusive

bargaining representative by the Regional Office of the National Labor Relations Board located in New York City and known as National Labor Relations Board, Region Two. Therefore, the interpretation and legality of the said contract is a matter to be decided by reference to federal law and not exclusively by reference to Texas law.

II.

The collective bargaining contract in question provides that any question of fact arising out of the interpretation or misapplication of this agreement or the alleged violation of the express terms of the agreement shall be submitted to a board of arbitration. It is provided that a decision of the majority of said board shall be final and binding upon the employees, the Company and the Union, and shall conclusively determine the controversy. It is further provided that if any party refuses to arbitrate or to comply with an arbitration award, the other party, in addition to all other rights and remedies, may declare the agreement null and void. Plaintiff should have, but has failed to, invoke the said arbitration procedure to settle the present controversy which includes questions of fact concerning the bargaining intention of the parties, questions of fact concerning the performance locale of the contract, as well as the legal ramifications of the various clauses of the contract.

III.

Mobil Oil Corporation is incorporated under the laws of the State of New York. Insofar as the present controversy is concerned, Mobil Oil Corporation operates a fleet of nine tankers by which it transports various petroleum products to and from various ports of the United States. A prominent phase of the Plaintiff's operations is the shipment of refined petroleum and chemical products from Plaintiff's refinery at Beaumont to various ports of the East Coast. Most of the products so shipped from the Beaumont refin-

ery go to the Port of New York or New England ports up to the State of Maine. Another phase of the Plaintiff's operations concerns the overseas shipment of petroleum and petroleum products, including Asiastic ports, as well as European. At the height of the Vietnam war as many as three of Plaintiff's nine tankers were under contract to the United States Government for such overseas shipments.

The affected employees work 85 days aboard ship followed by 37 days off duty. As stated, many of the employees are engaged in overseas voyages and in other activities on the East Coast, but at a maximum, an employee engaged in uninterrupted round trip voyages to and from the Beaumont refinery will be docked at Beaumont a maximum of approximately 18 hours once every 12 days, or 6% of the time. Upon information and belief, Defendants allege that the average percentage of the time spent by the affected employees within the territorial jurisdiction of the State of Texas in the performance of their duties is substantially less than 5%. The other 95% or more of their time is spent working in territories where union security clauses of the type complained of are lawful.

IV.

Defendants show the Court that in any event the agency shop clause is not illegal under the laws of the State of Texas as alleged in the Complaint.

V.

Defendants readopt and reallege all of the matters of fact set forth above and they show the Court that under the circumstances above stated, the decision whether the application of the agency shop clause in any given situation is or is not subject to Texas law or is or is not lawful under federal law is a matter exclusively entrusted by Congress to the primary jurisdiction of the National Labor Relations Board to make the first decision.

WHEREFORE, Defendants pray that the Complaint be dismissed.

DIXIE, WOLF & HALL

By /s/ CHRIS DIXIE
Chris Dixie

By /s/ JAMES P. WOLF
James P. Wolf
Suite 401, 609 Fannin St.
Building
Houston, Texas 77002
713/223-4444

Attorneys for the Defendants

CERTIFICATE OF SERVICE

I, Chris Dixie, certify we have served a copy of the foregoing Defendants' Answer and Affirmative Defenses on Mr. James W. Hambright, Attorney for the Plaintiff, by mailing a copy thereof to his office in the Beamont Savings Building, Beaumont, Texas, 77701, properly addressed this 1st day of November, 1971.

/s/ CHRIS DIXIE
Chris Dixie

PRETRIAL STIPULATION AND ORDER

(Number and title omitted) (Filed: June 26, 1972)

1.

JURISDICTION

Jurisdictional pleas of defendants, Oil, Chemical and Atomic Workers International, AFL-CIO, and Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International, AFL-CIO, have been overruled. This Court has jurisdiction of the parties. Defendants claim the Court lacks jurisdiction because, they assert, there is no actual case or controversy between the parties.

2.

PENDING MOTIONS

There are no pending undisposed of motions.

3.

CONTENTIONS OF PLAINTIFF

Plaintiff contends that the agency shop clause appearing in its labor contract with defendant Unions is unlawful under the right-to-work laws of the State of Texas, and should be declared invalid and unenforceable, while the remainder of the labor contract is in full force and effect.

4.

CONTENTIONS OF DEFENDANTS

A. There is no actual case or controversy in the constitutional sense sufficient to confer jurisdiction upon the Court.

B. The contract in question expires on July 31, 1972 so that in any case the matter will be moot at that time.

C. A statutory procedure before the National Labor Re-

lations Board exists for the adjudication of the validity of the agency shop agreement as applied to any particular employee in any particular state if, as and when an actual case or controversy concerning any specific employee should arise. The statutory procedure provides for a precise adjudication by an agency of experts created by Congress for the administration of the Labor-Management Relations Act of 1947, as amended. The appropriate scope of the agency shop clause in an interstate contract is peculiarly appropriate for determination by the National Labor Relations Board. Therefore, the Court in the exercise of a sound discretion should refrain from rendering a declaratory judgment.

D. Under all the circumstances of the case, including the fact that 95% of the working time of the affected employees is spent outside the State of Texas, the Texas statutes have no application to this labor contract.

E. Alternatively, under all the circumstances of the case, the Texas statute can be applied at most to those employees who have predominant contact with the State of Texas in their work and cannot be applied to those employees whose predominant contact with their jobs occurs outside the State of Texas.

F. The relevant Texas statutes do not by their own terms purport to have extra territorial effect.

G. Alternatively, if such statutes purport to have extra territorial effect, they have been preempted by the Labor-Management Relations Act of 1947, as amended.

H. Section 8(a) of Article 5154a, Vernon's Civil Statutes, prohibits the collection of a fee, assessment, or collection of a sum of money as a condition of employment only in circumstances where the employee is denied union membership by the union. This is so because the Manford Act, of which it is a part, expressly authorizes and preserves closed shop contracts in Texas.

I. Section 2 of Article 5207a and Section 1 of Article

5154g do not by their terms prohibit the collection of an agency shop fee where there is no compulsory union membership.

J. In the exercise of sound discretion, the Court should decline to render declaratory judgment because any declaration of rights and duties must be specifically tailored to a specific type employee who works within the State of Texas sufficiently to justify application of Texas law and no such specific employee exists as an actual case in controversy.

K. Alternatively, if the Court should conclude to render a declaration of rights and duties, the same should be carefully tailored to apply only to those employees who are subject to Texas statutes and to exclude all employees who are subject to the laws of other states or who perform predominant work on the high seas.

5.

Plaintiff does not agree that Defendants' contentions are necessarily pertinent to the issues in this case nor that they present defenses properly cognizable by the Court, nor that they are necessary to a decision in this case.

6.

It is stipulated that copies of the following documents will be received in evidence without further proof:

(a) Contract between the parties dated November 1, 1969 and expiring July 31, 1972

(b) Letter of date April 23, 1970, addressed to the Defendants and signed by John T. Knepper, Manager, Gulf-East Coast Operations with enclosed copy of notice to new unlicensed seamen

(c) Union newsletter dated July, 1971

(d) MOBIL MARINER, No. 61 dated July, 1971

(e) WELCOME ABOARD! (Handbook given to new employees)

(f) Photograph of Technical Building, Beaumont Refinery (Gulf-East Coast Operations Headquarters), from the West

(g) Opinion letter of the Attorney General of Texas No. WW-1018 dated March 14, 1961

(h) Copy of Unfair Labor Practice Charge filed with NLRB on September 30, 1969 in Case No. 23-CA-3440

(i) NLRB letter of date September 30, 1969 to Mr. John Knepper in Beaumont pertaining to Case No. 23-CA-3440

(j) Letter from Mr. Knepper to Mobil Tankers Officers Association dated May 7, 1970

(k) Labor contract, Radio Officers' Union of the United Telegraph Workers, AFL-CIO, March 1, 1970

(l) NLRB Trial Examiner's decision in Case No. 23-CB-1222 dated March 30, 1972

7.

The defendants will offer the following documents which will be received in evidence without further proof:

1. NLRB Decision in Case No. 2-AC-7 rendered June 17, 1970

2. Memorandum of Understanding executed at New York, October 30, 1969

3. Agreement between Plaintiff and Deck & Engineer Officers, executed in New York, December 8, 1969

4. Mobil letter, June 7, 1967

5. Mobil letter, September 19, 1968

6. Mobil letter, January 22, 1969

7. Mobil letter, April 8, 1969

8. Mobil letter, June 5, 1969
9. Mobil letter, June 24, 1969
10. Mobil letter, January 7, 1970
11. Mobil letter, April 1, 1970
12. Mobil letter, July 20, 1970
13. Mobil letter, October 12, 1970
14. Mobil letter, November 16, 1970
15. Mobil letter, January 13, 1971
16. Mobil letter, April 6, 1971
17. Mobil letter, July 19, 1971
18. Mobil letter, July 20, 1971
19. Mobil letter, August 16, 1971
20. Mobil letter, January 27, 1972
21. Mobil letter, February 3, 1972
22. Mobil Mariner, December, 1966
23. Mobil Mariner, March, 1967
24. Mobil Mariner, February, 1968
25. Mobil Mariner, October, 1968
26. Mobil Mariner, November, 1971
27. Miscellaneous excerpts from ship's logs furnished by Company to Union (to show movement of ships and time to port).

8.

In addition to the documents listed, the parties reserve the right to offer further evidence and documents as may be necessary for rebuttal or impeachment or otherwise relevant.

9.

The probable length of the trial of this case is two days.

Approved, Signed and Entered this 26th day of June, 1972.

/s/ Joe J. Fisher
Chief Judge, United States
District Court

Approved:

Warren H. Greene, Jr.
150 E. 42nd Street
New York, New York 10017

Orgain, Bell & Tucker
By: /s/ James W. Hambright
James W. Hambright
Beaumont Savings Building
Beaumont, Texas 77701

Attorneys for Plaintiff

Dixie, Wolf & Hall
By: /s/ Chris Dixie
Chris Dixie
Suite 401, 609 Fannin Street Building
Houston, Texas 77002

Attorneys for Defendants

MEMORANDUM WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Number and title omitted) (Filed: July 12, 1972)

The above entitled cause came on for trial at a regular term of court and the cause having been submitted to the Court and the Court having considered the pleadings, the evidence, the briefs of the parties, and being fully advised in the premises, now makes and files its findings of fact and conclusions of law:

FINDINGS OF FACT

1.

Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations, the Plaintiff herein, operates eight (8) oceangoing tankers documented under the laws of the United States.

2.

Defendant Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, which is affiliated with Defendant Oil, Chemical and Atomic Workers International Union, AFL-CIO, is the exclusive collective bargaining representative of all unlicensed seamen employed on board Plaintiff's tankers.

3.

Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations, which is the Plaintiff herein, has its management headquarters in Jefferson County, Texas and has been so located since April 1, 1962. Mobil Oil Corporation is a New York corporation and has qualified to do business in the State of Texas.

4.

Defendant Maritime Local No. 8-801 of Oil, Chemical and

Atomic Workers International Union, AFL-CIO maintains offices in Beaumont, Texas and in New York, New York.

5.

Plaintiff and Defendants negotiated a collective bargaining agreement in the State of New York to be effective from November 1, 1969 to July 31, 1972.

6.

A draft of the collective bargaining agreement dated November 1, 1969 was executed in the State of New York.

7.

The collective bargaining agreement was typewritten and prepared in final form and re-executed in the State of Texas.

8.

The State of Texas collects unemployment compensation insurance payments on all personnel employed on board Plaintiff's tankers, regardless of the designation of home address or shipping port.

9.

Payments of unemployment compensation insurance have been made to the State of Texas since April 1, 1962 on account of all personnel employed on board Plaintiff's tankers.

10.

Two hundred and eighty-nine (289) unlicensed seamen are employed by Plaintiff.

11.

One hundred twenty-three (123) unlicensed seamen out of two hundred eighty-nine (289) have reported to Plaintiff that Texas is their State of residence.

12.

One hundred fifty-two (152) unlicensed seamen out of two hundred eighty-nine (289) have requested Plaintiff to list Beaumont, Texas as their shipping port.

13.

Payroll records are maintained in Texas for all personnel employed on board Plaintiff's tankers, and Plaintiff places funds on board its tankers in Texas for use in paying wages due to personnel employed on board Plaintiff's tankers.

14.

Plaintiff makes remittances in Texas of F.I.C.A. taxes as well as federal income taxes withheld from the pay of all personnel employed on board Plaintiff's tankers.

15.

Plaintiff employs, or approves the employment of, all unlicensed seamen at its headquarters in Beaumont, Texas.

16.

Plaintiff makes monthly remittances of union dues deducted pursuant to authorization from the wages of unlicensed seamen, with such remittance being mailed by Plaintiff from Texas to the New York office of Defendant Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO.

17.

All grievances filed on approved grievance forms by unlicensed seamen employed on board Plaintiff's tankers are submitted to and considered by Plaintiff's manager at his office in Beaumont, Texas.

18.

All of the unlicensed seamen employed on board Plaintiff's tankers are regularly present in the State of Texas inasmuch as Plaintiff's tankers are on voyages beginning or ending at Texas ports in their normal trade.

19.

At all times some of the unlicensed seamen employed by Plaintiff are in the State of Texas, either on board tankers operated by Plaintiff or on paid vacation receiving pay from Plaintiff.

20.

A more substantial part of the administration of the collective bargaining agreement and the performance thereof occurs and takes place in the State of Texas than in any other State.

21.

The acts performed in the State of Texas in the administration and performance of the collective bargaining agreement are such that the State of Texas is intimately concerned with the collective bargaining agreement and with the employees working thereunder.

22.

Plaintiff advised Defendants that the agency shop clause of the collective bargaining agreement is unlawful and invalid because of violation of the Texas right-to-work statutes, and Plaintiff advised the personnel employed on board Plaintiff's tankers that membership in labor unions is voluntary.

23.

Defendants rejected Plaintiff's position and issued written notice in July, 1971 to unlicensed seamen employed on board Plaintiff's tankers stating that membership in Defendant Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO, or pay-

ment of dues to Defendant Maritime Local No. 8-801 of Oil, Chemical and Atomic Workers International Union, AFL-CIO is a condition of their employment and that Defendants will cause any non-complying employees to be fired.

24.

A bona fide controversy exists between the parties with respect to the validity of the agency shop clause (Article I, ¶ 2b) in the collective bargaining agreement between Plaintiff and Defendants.

25.

The enforcement or attempted enforcement by Defendants of the agency shop clause (Article I, ¶ 2b) in the collective bargaining agreement directly involves Plaintiff's employees in the State of Texas.

26.

The enforcement or attempted enforcement by Defendants of the agency shop clause (Article I, ¶ 2b) in the collective bargaining agreement directly involves Plaintiff's operations and activities in the State of Texas.

27.

The enforcement or attempted enforcement by Defendants of the agency shop clause (Article I, ¶ 2b) of the collective bargaining agreement directly involves Plaintiff's administration of said collective bargaining agreement in the State of Texas.

CONCLUSIONS OF LAW

1.

An actual bona fide controversy exists between the parties so as to give the Court jurisdiction of this cause under § 301 of the Labor-Management Relations Act of

1947, as amended (29 U.S.C., § 185(a) and (c)), for the purpose of securing declaratory judgment pursuant to the Federal Declaratory Judgment Act (28 U.S.C., § 2201).

2.

The controversy is not moot.

3.

The statutory procedure before the National Labor Relations Board does not preclude the Court's consideration of the issues in this case or prevent the Court from entering a declaratory judgment herein.

4.

The Texas right-to-work statutes have not been preempted by the Labor-Management Relations Act of 1947, as amended, and the validity of the Texas right-to-work statutes with respect to the execution or application of a collective bargaining agreement with an agency shop clause is upheld by Sec. 14(b) of the Labor-Management Relations Act of 1947, as amended (29 U.S.C. § 164(b)).

5.

The application and attempted application of the agency shop clause (Article I, ¶ 2b) of the collective bargaining agreement to all of Plaintiff's operations and employees contravenes the Texas right-to-work statutes, being § 8a of Article 5154a; § 2 of Article 5207a; § 1 of Article 5154g, Vernon's Annotated Civil Statutes.

6.

The agency shop clause (Article I, ¶ 2b) of said collective bargaining agreement is void and unenforceable. *Accord*, Opinion No. WW-1018 of the Texas Attorney General issued on March 14, 1961.

7.

The agency shop clause (Article I, ¶ 2b) of said collective bargaining agreement is severable and its invalidity does not affect the remaining provisions of the contract.

8.

Plaintiff is entitled to the relief sought, and judgment should be entered accordingly.

SIGNED AND ENTERED this 12th day of July, 1972.

/s/ JOE J. FISHER
Chief Judge, United States
District Court

JUDGMENT

(Number and title omitted) (Filed: July 12, 1972)

This action came on to be tried before the Court and the evidence adduced by the parties having been heard and the Court having made its findings of fact and conclusions of law:

It is hereby ORDERED, DECLARED and ADJUDGED that:

1.

Article I, ¶ 2b of the collective bargaining agreement dated November 1, 1969 between Plaintiff and Defendants, reading as follows:

"2. UNION SECURITY

b. For the duration of the Agreement all employees hired shall, as a condition of employment, become members of the Union and/or in the alternative pay the regular union dues and initiation fees within 31 days from the employment date.",

is void and unenforceable.

2.

Article I, ¶ 2b is severable from the remainder of the collective bargaining agreement and the invalidity of said Article I, ¶ 2b does not affect the other provisions in said contract, all of which remain in full force and effect.

3.

Costs are adjudged against the Defendants.

To which action, order and ruling of the Court Defendants then and there in open court excepted and are allowed their exceptions.

SIGNED and ENTERED this *12th* day of July, 1972.

/s/ JOE J. FISHER
Chief Judge, United States
District Court

MOTION FOR NEW TRIAL AND AMENDMENT OF JUDGMENT AND MOTION FOR AMENDED AND ADDITIONAL FINDINGS

(Number and title omitted) (Filed: July 24, 1972)

Under Rules 52 and 59, Federal Rules of Civil Procedure, Defendants, Local No. 8-801, Oil, Chemical & Atomic Workers International Union, AFL-CIO, and Oil, Chemical & Atomic Workers International Union, AFL-CIO, move for a new trial and alternatively for amendment of Judgment and likewise for additional and amended findings as follows:

I.

Under Rule 52, Defendants request the additional and amended finding that employees' work time is spent entirely aboard deep sea tankers and that such vessels are located on the high seas or in ports other than ports of the State of Texas approximately 80% to 90% of the time.

II.

Defendants request an amendment of the Judgment itself, to conform to the findings and conclusions of the Court and to requested additional findings in this respect: Nowhere in the findings of fact or conclusions of law does the Court hold that an agency shop clause may be bargained for application to *any* employees in the bargaining unit. To the contrary, conclusion No. 5 says expressly that the application and adopted application to *all* of Plaintiff's employees contravenes the Texas statutes. From this it appears that perhaps a properly tailored contract clause applicable to some but not all of Plaintiff's employees would be lawful under the Court's declaratory judgment. Neither the findings, the conclusions, nor the Judgment clarifies to what extent and upon what basis agency shop provisions may lawfully be applied or how such a clause may lawfully be drafted for application to some of Plaintiff's employees.

III.

Because of the deficiencies in the findings and Judgment above stated, the declaratory judgment has not settled the controversy. To the contrary, it has induced uncertainty in the respects stated above.

IV.

In addition, Defendants advise the Court that the declaratory judgment has caused disagreements between the parties in the bargaining of a *new* contract which, of course, is not before the Court. Because of this consequence of the declaratory judgment, the same should be set aside. Defendants advise the Court that they have proposed a modified form of agency shop to the Company based upon the location of work of employees but the Company, so far as Defendants can tell, does not wish to bargain on this but adheres to the ruling of this Court as controlling the terms of the new contract.

V.

Alternatively, the Court's Judgment should be set aside because it is erroneous in law and in fact in failing to give effect to the location of work of employees as an appropriate, relevant factor which legalizes the clause as to the employees in question.

Respectfully submitted this 21st day of July, 1972.

DIXIE, WOLF & HALL

By: /s/ CHRIS DIXIE
Chris Dixie
Suite 401, 609 Fannin
St. Building
Houston 2, Texas
713/223-4444

Attorneys for Defendants

ORDER DENYING DEFENDANTS' MOTION FOR NEW TRIAL, GRANTING AN ADDITIONAL FINDING OF FACT, AND AMENDING A CONCLUSION OF LAW

(Number and title omitted) (Filed: August 14, 1972)

1.

Defendants' Motion for a New Trial is hereby in all things denied.

2.

Defendants' Motion for Amended Findings is hereby granted in part, and this Court's "Memorandum with Findings of Fact and Conclusions of Law" as signed and entered on July 12, 1972 is amended and supplemented as follows:

(a) Between Finding of Fact No. 18 and 19 there shall be addded a new Finding of Fact, numbered 18(a) which shall state as follows:

> "Substantially all of the employees' work time is spent aboard Plaintiff's tankers, and such vessels are located on the high seas or in ports other than ports located in the State of Texas approximately 80% to 90% of the time, but at any given point in time one of the vessels generally is located in Texas or Texas waters."

(b) The Conclusion of Law No. 5 shall be amended so as to add the words "any or" immediately prior to the words "all of Plaintiff's operations and employees". As amended said Conclusion of Law No. 5 will read:

> "The application and attempted application of the agency shop clause (Article 1, ¶ 2b) of the collective bargaining agreement to any or all of Plaintiff's operations and employees contravenes the Texas right-to-work statutes, being § 8a of Article 5154a; § 2 of Article 5207a; § 1 of Article 5154g, Vernon's Annotated Civil Statutes."

RENDERED AND SIGNED this 14th day of August, 1972.

/s/ JOE J. FISHER
Judge Presiding

APPELLANT'S DESIGNATION

Date: November 28, 1972

Mr. John Tucker
4th Floor, Beaumont Savings Building
Beaumont, Texas 77701

Re: No. 72-3272—Mobil Oil Corp., et al.
v. OCAW, et al.

Dear Mr. Tucker:

In the above case Appellants transmitted to you today their Appellants' Brief.

Under Rule 30, Rules of Appellate Procedure, Appellants designate the following portions of the Record for printing in the Appendix:

	Original Record Page No.
Caption	1
Complaint	2-5
Defendants' Motion to Dismiss	10
Order Denying Defendants' Motion to Dismiss	16
Defendants' Answer	17-21
Pretrial Stipulation and Order	90-95
Memorandum With Findings of Fact and Conclusions of Law	123-129
Judgment	130
Defendants' Motion for New Trial and Amendment of Judgment and Fact Findings	131-132
Order Denying Motion for New Trial and Making an Additional Finding and Amending a Conclusion	145-146
Transcript of Proceedings (Appendix 147)	

Testimony of John Knepper	31, 126, 172, 215-216
Testimony of Donald Sanhueza	219-240-253
Testimony of John Perrio	255-257-263

We have made arrangements with Mr. Jerry Bloxom of Beaumont, Texas, to print the Appendix and you will, therefore, please deliver the Record to him when you serve your brief.

We are sure Mr. Bloxom is familiar with Fifth Circuit Rules which strictly require the filing of the Appendix within twenty-one (21) days after Appellee's brief is filed.

Yours truly,

DIXIE, WOLF & HALL
By: /s/ CHRIS DIXIE
Chris Dixie

CD:eys
cc: Mr. Edward W. Wadsworth, Clerk
U.S. Court of Appeals
Fifth Circuit
Room 408 - 400 Royal Street
New Orleans, Louisiana 70130

Mr. Jerry Bloxom, Court Reporter
Federal Courthouse
Beaumont, Texas 77701

APPELLEE'S DESIGNATION

Date: November 30, 1972

Re: 72-3272—Mobil Oil Corporation, et al v.
OCAW, et al—United States Circuit Court
of Appeals, Fifth Circuit

Mr. Jerry Bloxom, Court Reporter
P.O. Box 3481
Beaumont, Texas 77704

Dear Mr. Bloxom:

We have Mr. Chris Dixie's letter of November 28, with respect to instruments to be included in the Appendix.

In behalf of plaintiffs, Mobil Oil Corporation, et al, we request that you include the following:

(1) Plaintiffs' objections to defendants' motion to dismiss and memorandum, pages 13 and 14 of the Record;

(2) All of the testimony, both direct, cross, redirect, etc., of the witnesses, John Knepper, Donald Sanhueza, and John Perrio.

Very truly yours,

ORGAIN, BELL & TUCKER

/s/ JOHN G. TUCKER
John G. Tucker

JGT:DFG
cc-Mr. Edward W. Wadsworth, Clerk
U.S. Court of Appeals: Fifth Circuit
Room 102, 600 Camp Street
U.S. Court of Appeals Courthouse
New Orleans, Louisiana 70130

cc-Mr. Chris Dixie
Dixie, Wolf & Hall
609 Fannin Street Building, Suite 401
Fannin Street at Texas Avenue
Houston, Texas 77002

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

MOBIL OIL CORP., MARINE TRANSPORTATION DEPT., GULF-EAST OPERATION, *Plaintiffs,* *vs.* OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION AFL-CIO, ET AL, *Defendants.*	CIVIL ACTION No. 7413

TRIAL PROCEEDINGS

Heard at: Beaumont, Texas
On: June 26 and 27, 1972

[2] **APPEARANCES**

HON. JAMES W. HAMBRIGHT
Orgain, Bell & Tucker
Attorneys at Law
Beaumont Savings Building
Beaumont, Texas 77701

For the Plaintiffs

HON. CHRIS DIXIE
Attorney at Law
Suite 401, 609 Fannin Street Bldg.
Houston 2, Texas

For the Defendants

BE IT REMEMBERED that the following proceedings were had in the above-styled and numbered civil cause before the Honorable Joe J. Fisher, United States District Judge, on June 26 and 27, 1972, to-wit:

[3] **INDEX**

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[4] MORNING SESSION
6-26-72

The Court: Please be seated.

Mr. Hambright, we are ready to proceed.

Mr. Hambright: May I make a brief opening statement, Your Honor?

The Court: Yes. Please go to the lectern.

OPENING REMARKS

BY MR. HAMBRIGHT:

If it please the Court, this case involves a labor contract

between the plaintiff, Mobil Oil Corporation, Marine Transportation Department, Gulf East Coast Operations, and two Unions, the Local 8-801 of the Oil, Chemical & Atomic Workers International Union, AFL-CIO, and the Oil, Chemical & Atomic Workers International Union, AFL-CIO itself. [5] This labor contract contains, among other provisions, a section entitled "Union Security", and in this section of the contract there appears what is known as an agency shop clause which requires that employees upon going to work for the company within thirty-one days must join the Union or else pay Union dues in lieu thereof and this appears as Article 1, Section 2-b of the contract. The Attorney General of the State of Texas has ruled that this sort of clause is invalid in controvention of the Texas Right-to-Work statute. There are a number of those statutes. The Taft-Hartley Act of the United States of America provides that it is permissible for states to maintain their right-to-work law and I think the importance to us in the case is the wording of the Taft-Hartley Act which is the Section 14b, it's quite note [6] worthy, which is widely known throughout the land in that the Unions have been attempting to have that revoked for many years and Congress has never seen fit to do so. But what it says can be capsuled into one sentence, and if the Court would permit me to quote this, to explain our position, the controlling sentence in Article 14b says: "Nothing in this sub-chapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any state or territory in which the execution or application is prohibited by state or territorial law." The statute, therefore, speaks in the disjunctive, if the labor agreement was either executed in the state or received application in the state and if the state has prohibited that nature of agreement, then it is [7] void under federal labor law. So in the case at bar we will show the Court that the labor contract which covers the employees in this particular bargaining unit does con-

tain this prohibited provision and ought to be declared invalid and on either one or both grounds we will show that it was executed within the State of Texas, at least in part, but we will show independently of that as an alternative ground for recovery that it received application in the State of Texas within the meaning of this provision of law.

So the defendants have raised various defenses, some of which have been disposed of by this Court already when it overruled their motion to dismiss this case as not being properly under the section 301 of the Taft-Hartley Act. This has been disposed of and other ancillary matters of that nature. So I believe I have covered [8] the principal and primary parts of our statement, I would add that it has been stipulated that the Court does have jurisdiction of the parties and there is no pending and undisposed of motions.

The Court: All right, do you care to make a statement at this time, Mr. Dixie?

Mr. Dixie: Yes, sir, Your Honor.

OPENING REMARKS

By Mr. Dixie:

If the Court please, this is a case for declaratory judgment, that is all the relief they ask for. The contract that they want the Court to rule upon will expire at the end of July of this year. The evidence will show that the parties are bargaining now for a new contract.

I feel constrained to call that to the Court's attention because we have not had a pre-trial hearing in [9] this case and the Court might wish to bear this in mind, the early termination of this contract.

Now the bargaining unit in question concerns members of the crews of various tankers operated by the Mobil Oil Corporation between primarily Beaumont, Texas on the one end and sometimes other Texas ports, and ports along

the New England Coast, as well as other ports on the Atlantic Coast. If the Court would like to have just a thumbnail statement of what this case is about, the plaintiffs are attempting to extend the application of Texas law to the Statue of Liberty, and it is the defendant's position that this is not a proper interpretation or holding by this Court. There is no case, state or federal, that I am aware of or could find which passes upon the exact problem in this case, but there are several principles [10] of law that I think apply to this case which caused this Court in the exercise of sound discretion to decline to render the declaratory judgment and, in the alternative, if you decide to render the declaratory judgment then the Court should carve with great care where you propose to apply the Texas law and where the law of the United States may apply and where the law of other states may apply. One of the points that we raise here is the question of the lack of a case or controversy, sufficient to give this Court jurisdiction to pass upon the particular issues that the plaintiffs tender to the Court. Now in one respect it may be said that there is a case or controversy insofar as the plaintiffs claims that the contract is unlawful as applied to anybody in the bargaining unit.

We will have evidence today that one of these tankers is under charter [11] to the United States Government. It hasn't been in Texas for fifty days, it is over in the Pacific now and it is on its way to Honolulu and Vietnam and it won't be back for six months. We don't think it is very sensible to apply Texas law to that situation.

Now the important thing I want to get over to the Court about this discussion is that we don't have the case of Joe Blow, a seaman, who doesn't want to join the Union. We don't have any such case. We just have a discussion between the parties in which the company says the whole contract is illegal as applied to everybody. The defendant says that is not true. The contract does have certain legitimate applications, as to what legitimate applications it

has the Court does not have sufficient facts before it or events to raise a case or controversy in the constitutional [12] sense. In the alternative, if there is jurisdiction, we suggest to the Court that in the exercise of sound discretion this Court should not render iffy or hypothetical opinions of Joe Blows that may or may not arise in the future. Another area of discretion for this Court is the question of your interpretation of Texas law. No Texas case says that an agency shop clause is illegal and however much you might be inclined to think that it is possibly legal you are called upon in this case to make a decision, a first impression in a federal court on declaratory judgment. No Texas case has held that it was the intention of the Texas legislature to give extra-territorial effect to the Texas law. Now in this connection there are two questions. The first one is what is the power of the State of Texas to apply its law to the high [13] seas or to the Port of New York. That is one question, but an ever more pertinent question here is what was the intention of the Texas Legislature in enacting this and other laws with reference to extra-territorial application. We have a later case by the Supreme Court of Texas to which we respectfully refer the Court. Marmon v. Mustang Aviation, Inc., 430 S.W. 2d, 182, decided in 1968.

The Court: What is the page?

Mr. Dixie: 182, Your Honor. Where the Texas Supreme Court holds that as a matter of Texas statutory construction we do not imply a legislative intention to go outside the boundaries of the State of Texas. To the contrary, the statute must show on its face a legislative intention to have extra-territorial application and so on. So when we get to that rule of law the Court is called [14] upon to decide in declaratory judgment for the first time whether or not this Texas statute was intended to have extra-territorial effect.

By the way, the Texas courts have plenty of jurisdiction to pass upon the extent of this statute and the validity of

this contract. It is one of the exceptions to the pre-emption doctrine, they can decide the extent of their state law as applied to contracts in this state. So we say they are in the wrong state. I mean the wrong court. There is another question that we interpose here, and we think that the Court should consider it and that is, there is a question of federal law. We are supposed in these federal cases to come up with contract rules and decisions that reflect a policy of the federal labor laws and this policy we have drawn from the statutes, the [15] Supreme Court has told us on many occasions. We have here a federal law that says that an agency shop is lawful except where prohibited by a state law. For example, in the State of New York an agency shop is lawful. I can think of no reason why an agency shop contract is not lawful on the high seas, and this Court is called upon to select as between federal law and state law. Although in Texas members of the Texas Bar are disposed to make that agency shop as intensively morally bad. I hope the Court will bear in mind that a Union, just like the federal courts, need money to operate and a Union must serve the non-Union man as well as the Union man, and there is not anything so terrible, as I see it, about the idea that everybody ought to have to pay equal, uniform and reasonable dues for the services that are provided. Of course, Congress has made a de [16] cision that these states will have the right to prohibit and the minority of the states do. Now if this defendant were to request this plaintiff to discharge anybody for failing to join the Union, if that were to happen and if that individual were to file a charge before the National Labor Relations Board, the National Labor Relations Board will pass upon the proper scope and application of the interstate situation and to what extent Texas law applies and to what extent the law of the high seas applies and to what extent New York law applies. Here again, since declaratory judgment is a discretionary remedy, we outline to the Court that in the exercise of sound discretion the Court might wish to defer the decision

in this case to the possible case that might arise which can be adjudicated by the Labor Board. But if you decide to rule on [17] the case, then we have this suggestion to the Court. With the evidence we will show that these ships travel between northern ports and Texas ports with some variation and that about ten percent of the time of employees is spent in Texas, about ninety percent of the time of the employees is spent on the high seas or in port in other states and if the Court feel absolutely like some law must be applied to everybody in sight, uniformly, then there is less contact with Texas than there is with the rest of the world and we suggest that it is not appropriate under all of the circumstances of this case for the Court to give complete application to Texas law in the face of the fact that ninety percent of the time is worked by the men in question outside the State of Texas, and we will also show the Court how they are subject to the maritime juris [18] diction as is the employer of—that the contract was—the Union was certified in New York, the contract was negotiated in New York, it was executed in New York. The plaintiff is doing wish thinking when they try to put the execution of the contract in Texas. It is true that an administrative department is located in Beaumont, that is one factor that pushes against us in this case, but when you add up the whole case we say that the totality of the contract of these men predominates outside the State of Texas and a small minority of the contracts occur within the State of Texas, and under these ci cumstances if you get to the merits you ought to render judgment for the defendant. And that, I believe, will outline in general what our position is.

The Court: Mr. Dixie, you made a reference that the Court might refer [19] this case to what court? I didn't follow that. Just before you were talking about the propriety of the Texas Court and of this Court's deciding the matter because of slight exposure to Texas.

Mr. Dixie: If the Texas courts, the Texas State Court has jurisdiction to pass upon the extent of an application

of the Texas Right-to-Work Law, that is the first step. If the case actually arises of a man who doesn't want to join the Union voluntarily, that is subject to the jurisdiction of the National Labor Relations Board.

The Court: I see. All right, we will make some decision as we go along. We will proceed.

Mr. Hambright: If it please the Court, in view of the large number of points he raised, may I add one more section to my opening statement?

The Court: Yes, you may.

[20] **REBUTTAL REMARKS**

By Mr. Hambright:

In the first instance, Mr. Dixie has emphasized what he refers to as the time in Texas on the basis of ten percent versus ninety percent, and we would like for the Court to understand our position in regard to this. I do not think this is a proper approach to take. He is selecting one individual employee and he is stating that the man, referred to as, I believe, Joe Blow, may be in Texas ten percent of the time and the other ninety percent of the time he may be elsewhere. The true inquiry is in terms of all of the men in the bargaining unit, Your Honor, and the proof will show that there are about two hundred ninety odd men in the bargaining unit, and the proof will show that not ten percent of the time but probably, well, over half the time there will be some individual in the [21] bargaining unit present within the State of Texas, and the proof will, for instance, I understand that day before yesterday perhaps, maybe three days ago, there were two ships in here at once, in this eight tanker fleet, and when you add in the time, the total group of employees in the bargaining unit you get up well over half the time there are people physically present here who are subject to the laws of Texas, working on these vessels. So I think that would be our first point.

Secondly, the proof would show that one hundred percent of the time, one hundred percent of their employees are present in the State of Texas who are in the bargaining unit in this sense, over half the people are residents of the State of Texas, and the proof will show that aboard these ships the men work ninety days and they have a thirty day vacation, so at all times you have [22] a large number of individuals subject to this labor contract present within the State of Texas, either working aboard vessels or on vacation, but in any event, receiving pay, receiving money from their employer and so the connection with the State of Texas is not limited merely to the hypothetical case of one individual employee. But when you look at the total work force you perceive that there is one hundred percent connection and a constant connection with the State of Texas. Now on these authorities and law points referred to by Mr. Dixie the Court has already passed on about fifty percent of that. The other part we do not consider to be of any controlling importance against the position taken by the plaintiffs in this case. We feel confident that the authorities pose no impairment to the relief requested and we can support this with a brief at the proper time, if such is [23] necessary. But I think the main point Mr. Dixie attempted to show was this matter of approaching mootness or contract termination, and I would like to take just one moment of the Court's time to give the Court our feelings about it. We think it is a very serious matter. It is not rendered any less serious by the fact that this particular labor contract will expire July 31st. The fact of the matter is that this contract began on November 1st, 1969. It was about two months after that, in January of 1970, that my clients advised the Union that they had determined that there was a void section in their labor contract, just one void section on the agency shop section and in April of 1970, the facts will show that this was delivered, this objection was delivered in writing to the Union and the company repudiated this void section in April of 1970, and with a letter to the Union, copy of the [24] notice to the Union, they gave notice to all employees who might come and obtain work for this employer that Union membership was voluntary and they asked the employees to sign this specifically stating he acknowledged that Union membership was voluntary. There was no response from the Union in April of 1970, when this was done. There was no response the entire remainder of the year of 1970, and it was 1971 before the Union took action on this and at that time, in July of 1971, the contract being then some midway along its term, the Union sent out a notice telling the employees they must join the Union and if they did not they would be fired. So they would have the company terminate these employees and this was sent to the members of the bargaining unit. This happened in July of '71. There is some period of time necessary for the company to obtain information about this [25] letter, and it was not until about August of 1971 that the company became aware of the Union's position and within thirty days, Your Honor, this case was filed in your court in September of 1971, and this case was filed and the reason I am developing this is to show the Union's position as I take it now is, well, the contract expires in July, so this Court shouldn't have it, but I would like to just in a very brief way to advise the Court what happened following the filing of this suit in September of 1971.

The Union was served the same day as the suit was filed. Service was perfected on the International the very next day it was perfected on the Local. The President of the Local, Mr. Perrio, I believe, is in the courtroom, and he was served in his office in Beaumont, Texas. The International representative was served the day before, in Port Arthur, Texas, so there was no delay there. But then the Union came in and asked for delay of about five weeks before they were called up to file an answer in this case and for various reasons, some of the delay was allowed by the Court, but this carried us along into October. They moved to dismiss this case and the Court considered that, ruled

against that, and so it was finally November 2nd before the Union ever answered. November 2nd was the first time after the Union filed the answer in November, November 2nd, the Court set this case for pre-trial hearing in December of last year. December of 1971, and Mr. Dixie advised the Court that there had been no pre-trial hearing and I must respond to that and say there was a pre-trial hearing, but Mr. Dixie, he did not appear at that pre-trial hearing in December of '71. The Court did conduct a pre-trial hearing, however, and it was obvious that nothing [26] much could be done and so nothing was done except we filed a motion for summary judgment. We got that filed in early February, I believe, and the first thing that happened, the Union then moved for additional delay of about one month to consider this motion for summary judgment and filed an opposition to it. So this has brought it into March and April, April came around, at which time the Court established this hearing today. So in view of the swiftness with which this plaintiff moved once the controversy became obvious and the pains it took to obtain prompt service and the case moved forward with reasonable dispatch, I think that it comes as an improper request that the Court decline to act or delay acting or not act because of the approaching mootness. The mootness was not brought about by the plaintiff and I also question that there will be a true mootness because, as Mr. Dixie, I [27] believe, has indicated, these parties are engaged now in collective bargaining toward a successor labor contract for another period of years. Therefore, to some degree, I think an adjudication of this matter would be in order for that additional reason.

The Court: All right, do you care to make any further statements, Mr. Dixie?

Mr. Dixie: I don't like to get into quarrels with counsel and I will just concern myself with saying that I just don't agree with that whole course of litigation that counsel has outlined to the Court. This defendant got about two weeks from this Court time to answer the questions by witnesses

that were in New York and Beaumont, and I was in Houston, and the papers had to go around. You gave me two weeks. I got two weeks to answer the motions for summary judgment. I have been ready at all times, [28] there has been no delay, but the rule of law doesn't depend on that. If the contract expires the case becomes moot as a matter of law. I have a case here where the contract expires during the pendency of the appeal of the appellate court, the appellate court remanded it back with instructions to dismiss, that the matter was moot.

The Court: All right, we are ready to proceed. Mr. Hambright, who do you have next?

Mr. Hambright: May we invoke the rule at this time?

The Court: We will have all the witnesses who know themselves to be witnesses and present in the courtroom at this time to please stand. All of you who know yourself to be witnesses, if there are any questions, the attorneys will designate who may not be standing that you want to be used as witnesses.

[29] Mr. Dixie: I only have two witnesses, Your Honor, and they are two-party defendants, would I be permitted to keep one for each?

The Court: Yes.

Mr. Dixie: Is there any objection on keeping Mr. Perrio and Mr. Sanhereza, neither one of them is actually—

The Court: Are they all standing who will be witnesses,

Mr. Hambright: Yes.

The Court: You may lower your hands, Gentlemen, the rule has been invoked, which means you have to remain out of the hearing of the trial. You may remain about the court building but not in the courtroom. The Marshal will show you where you may stay.

Mr. Hambright, you may proceed.

Mr. Hambright: Your Honor, we will call John Knepper.

[30] JOHN KNEPPER, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

By Mr. Hambright:

Q. All right, would you state your name, please, sir?

A. My name is John T. Knepper.

Q. Mr. Knepper, where is your residence, please sir.

A. I live at 965 Wisteria Drive, in Beaumont, Texas.

The Court: Do you have any Problems, Mr. Dixie?

(Reporter's Note: Whereupon an off-the-record discussion was had at this time.)

Mr. Hambright: If it please the Court, we will stipulate that Mr. Perrio and Mr. Sanhereza, I think, have been ruled to be allowed to remain in the courtroom and Mr. Knepper and [31] Mr. Shanigan could remain in the courtroom.

The Court: All right. .

By Mr. Hambright:

Q. Mr. Knepper, would you tell us what is your occupation, please, sir?

A. I am manager of Gulf East Coast Operations, a portion of the main transportation department of Mobil Oil Corporation.

Q. All right, sir, and where is your office?

A. My office is located within the boundaries of the Mobil Oil Beaumont Refinery.

Q. Is that in Jefferson County, Texas?

A. Yes, sir.

Q. Mr. Knepper, I believe that this is a building you occupy in company with your administrative staff and various employees, is this correct?

A. Yes, sir, that's correct.

Q. Would you describe for the Court briefly where this building is at the refinery and which offices are used by you and your people?

A. Well, it is known as the Technical Building, [32] it is one of a block of three buildings just inside the gate facing the front of the property and our offices are on the second floor of the Technical Building.

Q. Mr. Knepper, would you tell me the broad functions of your organization as conducted at this place?

A. Well, our purpose is to husband and operate a fleet of eight petroleum tankers.

Q. You say a fleet of eight petroleum tankers?

A. Yes.

Q. All right, sir, do these tankers have a Master on each vessel?

A. Yes, sir.

Q. All right, sir, and to whom does this Master report as his immediate authority in the organization?

A. They report to the Marine Superintendent, whose name is Captain L. A. Papich.

Q. Is this Marine Superintendent, Mr. Papich, is he a resident of Beaumont?

A. Yes, sir, he is.

Q. All right, does he have an office there in the same place with you?

[33] A. Yes, sir, he has an office adjacent to mine.

Q. All right, to whom does Mr. Papich report?

A. He reports to me.

Q. Are you responsible then through Mr. Papich for the operation of these eight vessels?

A. I am.

Q. Now does Mr. Papich have an additional staff at this place?

A. Yes, sir, he does.

Q. Would you tell me the names and titles of some of these people that work for Mr. Papich?

A. Well, there is Mr. Ollie Johansen, who is the Port Steward, and who assists him by supervising more or less the food service and housekeeping functions on the ships through the Chief Steward, and handles provisioning of the vessels, taking care of services they need in the way of laundry, general housekeeping matters. There is also Mr. Carl Carlson, whose title Inventory Supervisor, and his job is to coordinate the ordering and delivering of spare parts and various stores that are required by the ships. There is a Mr. R. F. McLemore, who helps him in [34] the operational matters as far as layout of cargoes and scheduling and matters of that sort.

Q. Do these gentlemen, through Mr. Papich, work for you?

A. Yes, sir, they don't report directly to me, they report to him and he reports to me.

Q. But if something goes wrong on these provisionings or spare parts or housekeeping services, any of the many things related to the running of these ships are you not the man that would be the one to hear about it and have to take action?

A. Yes, sir, I would be.

Q. Now, Mr. Knepper, do you have other people in the Beaumont office reporting to you other than Mr. Papich?

A. Yes, sir, I do.

Q. Would you tell me about—would you tell me, for instance, the administrative supervisor? Could you tell me what that office is and the functioning of it?

A. Well, my administrative supervisor is Mr. Horace Streeper, and he serves more or less as the office manager, he has some girls reporting to him that handle communications and filings, [35] and he is also—does more or less staff work regarding budgeting and information regarding our expenditures and general business matters of that sort.

Q. Would you call him the money man?

A. That's what I often call him, yes.

Q. So that I understand you, budgeting matters and expenditures in connection with running these ships are handled in Beaumont, Texas, under your supervision?

A. Yes, sir, that's correct.

Q. All right, sir, now in this regard, do you have other people reporting to you beyond those you have named?

A. Yes, sir, two others that report directly to me. The superintendent of maintenance and repair and also the personnel supervisor.

Q. Well, now the maintenance and repairs, is this in the area of engineering?

A. Yes, primarily it has to do with shipyard overhauls and various repairs in addition to the general supervision of the engineering department on the ships as far as maintenance and repairs and operations are concerned.

[36] Q. Who is the head of that phase of your business?

A. Mr. C. J. Dayton.

Q. And I take it he has people that report to him?

A. Yes, he has an assistant and also a clerical person.

Q. And is his operation conducted wholly here in Beaumont, Jefferson County, Texas, under your control?

A. Well, yes, sir, it is controlled here, but, of course, the repairs might be—

Q. They might authorize them?

A. Well, they may be done elsewhere.

Q. Repairs could be made here or elsewhere?

A. That's correct.

Q. But their office would have to authorize them to pay for them and determine how much and to what extent, is this what you mean?

A. That's correct, that's the only way it can be done.

Q. All right, sir, now, Mr. Knepper, let's talk about employees for a minute. Do you have a personnel supervisor?

[37] A. Yes, sir, I do, Mr. Shanaghan is personnel supervisor.

Q. Is that—he is present in the courtroom?

A. Yes, sir, that is he.

Q. All right, sir, where, in brief, what are the duties of the personnel supervisor?

A. Well, he has a group of employees who schedule the assignments of the people to ships and make arrangements for them to join ships and schedule them on vacation, because our employees work ships for a period of time and then have a period of paid leave, it is necessary to set up an effective schedule where you have people rolling over, if you will.

Q. Do I understand, Mr. Knepper, that the assignment

of employees to the vessels is conducted by Mr. Shanaghan here in Beaumont, and under your supervision?

A. Yes, sir, that is true.

Q. Is this true of all of these vessels?

A. Yes, all are treated the same.

Q. All right, sir, go ahead with the rest of his duties.

A. Well, as I say, these people plan assignments, [38] also keep all of the personnel records, the records for each individual employee as to where he has been employed, what's the rate of pay and so on. When they make the assignments they have to send an assignment letter to the ship's Master so he will know what rate of pay to pay the man and what days he has been paid for and which days he has not and so on.

Q. Okay.

A. Mr. Shanigan also acts as staff to me in employee relation matters dealing with arbitration, grievances, negotiations, that sort of thing.

Q. All right, sir, you mentioned that he had assistants, I will ask you what are some of the—does he have a personnel assistant and who is this individual?

A. Well, he has Mr. Clarence Toby, who is records supervisor, and reporting to Mr. Toby are three persons who make assignments, both for officers and members of this bargaining unit that we are talking about.

Q. Could it be that—would you tell us how many people report to Mr. Shanigan?

A. There is five, I believe.

[39] Q. All right, sir, in addition to your supervision over your ship Masters and your budgeting and expenditures, your engineering and repair and your personnel, I will ask you whether or not you have occasion for a few

additional employees to report to you who may work elsewhere than in the Beaumont office?

A. Yes, sir, there are. We have two branch offices, one in New York City, which has three employees, and one in Paulsberry, New Jersey, which has three employees.

Q. Do these persons at the branch offices report to you?

A. Not directly, the people in New York report to Captain Sorrels, who is in Paulsberry, as do other people who are in Paulsberry, Captain Sorrels reports to Captain Papich.

Q. So the people in the branch office report to—is that Captain Papich that you identified a moment ago as living in Beaumont, Texas?

A. Yes, sir.

Q. Where the office is?

A. That's correct.

Q. Through Captain Papich do you control the functions of these branch offices?

[40] A. Yes.

Q. Do these people in the branch offices get their pay checks from your organization, are they part of your budgeting or budget?

A. They are part of my budget, our payroll is handled as a service for us through the company's computer center. As a matter of efficiency we are billed for their service. I don't write out their pay checks, no, sir.

Q. That computer service for most of your employees is located in Dallas, Texas?

A. Either Dallas, most of them are in Dallas.

Q. Most of your employees in Dallas?

A. No, sir, on the East Coast it would be elsewhere.

Q. All right, sir, now—

A. On the matter of their pay, I administer their pay, I determine whether they get raises, when they don't get raises. I can hire them and discharge them.

Mr. Hambright: May I ask the Court if the witness is speaking loud enough?

The Court: He is speaking all [41] right.

Mr. Hambright: I am having a little bit of trouble getting some of those answers, hearing him myself.

Q. All right, Mr. Knepper, in connection with this operation do you have labor contracts in force with the defendants named in this lawsuit, I won't go through the technical identification, but it is Local 8-801 of the OCAW and also the OCAW International?

A. Yes, sir, we do.

Mr. Hambright: Would you mark that, please.

The Clerk: Plaintiff's Exhibit No. 1.

By Mr. Hambright:

Q. Do you need any of your other papers?

A. I would like to have the affidavits that are in my briefcase to refresh my memory.

(Reporter's Note: At this point in the proceeding there was a short pause.)

By Mr. Hambright:

Q. Is this a true copy of the labor contract that [42] is the subject matter of the action here, Mr. Knepper?

A. Yes, sir, this is the working copy that is distributed generally.

Mr. Hambright: May we have that admitted?

Q. What is the date of that contract, Mr. Knepper?

A. I believe it is—

The Court: November 1st, '69.

The Witness: November 1, 1969.

By Mr. Hambright:

Q. And the expiration date?

A. July 31, 1972.

Q. All right, does that labor contract cover the seamen who work aboard these eight tankers?

A. Yes, sir, the unlicensed seamen.

Q. What other groups of employees does it cover?

A. Well, the licensed deck and engineering officers and radio officers are not covered by this agreement.

Q. Have you compiled data showing the number [43] of employees as of June 23rd, 1972, who are subject to this contract?

A. Yes, sir, we did do that.

Q. Have you also checked out the residence of these employees on a per state basis?

A. Yes, sir, we did that.

Q. Those others appear on your company records in the Beaumont office?

A. Yes, sir.

Q. What is the difference between a residence of an employee and a shipping port of an employee?

A. Well, a residence is, of course, where he makes his home. The shipping port is one of three ports that an employee selects when he comes to work for us, which may be Providence, Rhode Island, New York City, or Beaumont, Texas, and the purpose of designating a shipping port is to have a data point to compute employees' expenses in

traveling to join a ship. Very briefly, if the man joined the ship in Philadelphia, and the shipping point is Beaumont, he would receive X expenses from Beaumont to Philadelphia.

Q. All right, sir, did you prepare a typed-up list of these different states and the number of [44] employees residing in each?

A. Yes, sir, I did so.

Q. Also designating the shipping port?

A. Yes, sir.

Mr. Hambright: Would you mark that as P-2?

The Clerk: Plaintiff's Exhibit No. 2.

(Reporter's Note: Whereupon it was marked as Plaintiff's Exhibit No. 2.)

Mr. Dixie: Counsel, what number is that in the pre-trial order?

Mr. Hambright: This is—this may not be numbered, Mr. Dixie, it has not yet been offered. We are going to offer it when he identifies it. It is an up-to-date showing of the number of people from each state brought down to July 23rd.

By Mr. Hambright:

Q. Now, Mr. Knepper, what is the total number of employees in this bargaining unit under the labor contract identified as Exhibit 1?

[45] A. As of June 23rd, 1972 it was 289.

Q. Of those employees how many are resident citizens of the State of Texas?

A. 123.

Q. Do you have the information on several other states and, if so, would you advise the Court?

A. Yes, sir, there is sixty employees residents of New York, 21 of New Jersey, 16 of Florida, 13 of Louisiana, 10 of Maine, 10 of Rhode Island, and there were--excuse me, 36 other employees who lived in 16 other states or territories. No more than six in any of those.

Q. All right, now, under here the designated shipping ports of this group of employees, how many is designated at Beaumont, Texas as their shipping port?

A. Our records show 152 at Beaumont, Texas.

Q. How many in Providence, Rhode Island and New York?

A. Thirty for Providence, and One hundred and seven for New York.

Mr. Hambright: We offer this, Your Honor, as the tabulation of the testimony just given.

[46] The Court: All right, it will be accepted.

(Reporter's Note: Whereupon it was received in evidence.)

Mr. Dixie: I call the Court's attention to the fact that we didn't have the benefit of this in the pre-trial order.

The Court: All right, you may proceed.

By Mr. Hambright:

Q. Now, Mr. Knepper, have you checked into your records to see what the total payroll was during the year of 1971?

A. Yes, sir, I have done so.

Mr. Hambright: Mark this, please.

The Clerk: Plaintiff's Exhibit No. 3.

(Reporter's Note: Whereupon it was marked for identification as Plaintiff's Exhibit No. 3.)

By Mr. Hambright:

Q. If it please the Court, to avoid other objections as to the appearance of this information [47] on the pre-trial order, I would propose to prove these items by this witness before offering the exhibit as to illustrate his testimony, Your Honor.

The Court: All right, you may do so.

By Mr. Hambright:

Q. Mr. Knepper, the manner of paying these employees, would you first tell us without using figures just briefly how are these people paid for their work?

A. Well, when the seaman is assigned to a ship the Captain is furnished certain payroll data so he can run a payroll on his crew while they are aboard.

Q. Excuse me, where does the Captain get this data?

A. From our office in Beaumont.

Q. All right, sir.

A. It is generated there.

Q. All right.

A. He then runs a payroll on the ship and periodically pays his people in cash and employees who wish to can request what we call a draw check, [48] which means that the Captain will send a request to the payroll office in Dallas, which performs our payroll record-keeping, and some disbursements for it, and they will send a check to his bank or his wife or his dependent, whoever he may designate. When he leaves the ship he is entitled to a vacation and also in almost every case I would say in every case probably he is entitled to vacation.

The Court: Keep your voice up, you are letting it trail off.

The Witness: Yes, sir. He is entitled to vacation. His

vacation check is prepared in our Beaumont office. It is a check that is drawn on the First Security National Bank of Beaumont, and transmitted to the man. After his vacation he comes back to work and there may be a brief period of time when he is due pay for just standing by waiting to join the ship. If so, why he would receive a check either from Beaumont, or perhaps from the New York office, if he happens to [49] be a man that ships out of the Eastern ports. This is basically the way they receive their pay.

Q. All right, sir, now looking at those various items, in 1971, about how much money was paid in regard to vacation, I believe you testified this would be checks drawn on the First Security Bank in Beaumont, Texas?

The Court: Just a minute.

Mr. Dixie: Your Honor, I want to complain a little bit, we are fixing to validate a summary exhibit that I haven't seen before. I am aware that I have a perfect objection that the books and records are the best evidence if I haven't been given an opportunity to see the summary exhibit. I don't want to slow this trial down. I was wondering if I can at least have the exhibit in my hand while this interrogation is going on.

Mr. Hambright: We have no objection.

The Court: All right, if you will [50] furnish it to counsel, please, and you may reserve your objection until later, Mr. Dixie, if you want a little time to study it.

Mr. Dixie: I thank the Court.

By Mr. Hambright:

Q. What are the totals on the vacation checks, Mr. Knepper?

A. Well, in round numbers, $1,365,000.00.

Q. All right, now is this for the thirty days when a man is off the vessel after having worked ninety days?

A. Yes, sir, basically.

Q. Is this what you mean when you say vacation?

A. Yes, although I would point out to you that this is for the entire work force of the fleet, this includes the officers as well.

Q. I understand.

A. Yes.

Q. And this is handled through your office here in Beaumont, Texas?

A. That's correct.

Q. All right, sir, now on the cash supplied to [51] the Masters aboard ship for disbursement to the employees, what was the figure on that in 1971?

A. Again in round numbers, $1,994,000.00.

Q. Where did that cash money come from, Mr. Knepper?

A. Well—

Q. Here in Beaumont? Where do you get physical possession of the currency?

A. Delivered to the ships by armed guards, who take the money from the First Security National Band and deliver to the Captains of the ships.

Q. All right, sir, now I believe you testified that the Captain keeps that aboard the vessel and pays the men aboard ship?

A. That's correct.

Q. All right, how about these allotments that I—I understand that it is a device where a man designates so much of his pay to be mailed to a wife or a dependent or so forth, how much money was handled through allotments during the year?

A. Yes, well, allotments are drawn checks on this piece of paper we had a lot of—some will draw checks, they totaled $1,117,000.00.

[52] Q. Now where did that money come from? What office originated those checks?

A. Our Dallas payroll office drew those.

Q. Dallas, Texas?

A. Yes, sir.

Q. All right, sir, now was this done pursuant to arrangements from your office here in Beaumont?

A. Yes, sir, it is services for which we pay a service fee.

Q. All right, sir, now how much federal income tax and social security deductions were made by the Dallas payroll office during 1971?

A. $1,431,00.00.

Q. Now, Mr. Knepper, are these figures to which you have just testified the same as were included in your affidavit attached to the motion for summary judgment furnished to Mr. Dixie last February or March?

A. Yes, sir, they are essentially the same except for some rounding and the fact that we combined the income tax and the social security figures first.

Q. What is the grand total of those amounts of [53] money that were handled through your office or through the Dallas office under your direction for 1971?

A. $5,907,000.00.

Q. All right, sir, now turning your attention to the New York office for a moment. I believe you testified that certain payments were handled out of the New York office. I think you said they were for stand-by time and I will ask you also if your claims section for maintenance and cure

and disability, sickness, things of that nature, is that handled out of the New York office?

A. Yes, sir, in the marine department claims section there are claim adjusters who perform the service to us, they handle the sickness and accident, injury claims. They do draw vouchers and pay money to our employees as a service for us.

Q. Well, with respect to your organization here in Beaumont, is this New York claim handling on sickness and maintenance and cure, is this in the nature of or similar to what an insurance company might do for Texas employers?

[54] A. Yes, sir, I believe so.

Q. What is the total amount of money in 1971 that was handled by the New York office for all causes in respect to these employees?

A. My records show $69,700.00 is the sum.

Q. All right—

The Court: Just a minute, Mr. Hambright, I think we will recess here. We will recess the trial that is in progress at this time until 1:00, or 1:15. We will say 1:15. We will resume the trial at that time. The witness and the parties and the attorneys may be excused until that time.

Mr. Hambright: Thank you.

The Court: The Marshal will advise the witnesses outside, if there are some.

(Reporter's Note: Whereupon the Noon recess was taken and Court resumed.)

[55] AFTERNOON SESSION

The Court: Please be seated.

Have you seen Mr. Dixie?

The Marshal: No, Your Honor, I haven't.

The Court: You might take a look out there, he may be around. Have you seen him, Mr. Hambright?

Mr. Hambright: No, sir, Your Honor.

(Reporter's Note: At this point there was a short pause in the proceedings.)

Mr. Dixie: I am sorry, Your Honor, I got lost on the freeway. I made a wrong turn. Please excuse me.

The Court: That is all right. You may proceed.

By Mr. Hambright:

Q. Just prior to the Noon recess, Mr. Knepper, we were talking about some financial disburse [56] ments, I believe, and we have a document marked Plaintiff's Exhibit 3, which you have identified as being a calculation prepared under your direction, and for the purposes of my questions. I will again ask you what is the total dollar figure, do you have a copy of that before you, sir?

A. Yes, sir.

Q. What is the total dollar figure which was attributed to Texas?

A. $5,907,000.00.

Q. And what is the total dollar figure that we have attributed to New York through the main office?

A. $69,700.00.

Q. Have you made a calculation as to the ratio and percentage between those two figures and, if so, what did you find?

A. The ratio between New York expenditures and the Beaumont expenditures is approximately one to ninety-nine.

Q. So that the New York figure would be somewhere around one percent of the total?

A. Yes, sir.

[57] Q. I will ask you, Mr. Knepper, is this in general typical of the way it has been going thus far in 1972?

A. Yes, sir, as far as I know.

Q. Is it fairly representative of the way it went in 1970 and 1969?

A. Yes, sir, I believe these are typical figures for this operation.

Mr. Hambright: We do offer then what has been marked as Plaintiff's Exhibit 3 to illustrate this testimony.

The Court: All right, you may make the offer.

(Reporter's Note: Whereupon Plaintiff's Exhibit No. 3 was received in evidence.)

By Mr. Hambright: Would you mark this, please?

The Clerk: That will be Plaintiff's Exhibit 4.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit 4 for identification.)

By Mr. Hambright:

Q. Mr. Knepper, I show you what has been marked [58] as Plaintiff's Exhibit 4, and I will ask you to identify that, please, sir.

A. This is a booklet entitled, "Welcome Aboard", which we produced to give some orientation to new employees. That gives them some information that is useful to their dealings with us.

Q. Is this handed out to all new employees?

A. Yes, sir, it is.

Q. Is it published under your direction and control?

A. Yes, sir, it was written and published in Beaumont.

Q. Can you tell us where this is printed up?

A. I believe this particular booklet was printed for us in Dallas. It was written in Beaumont.

Q. Written in Beaumont and printed in Dallas?

A. Yes, sir.

Q. You are referring to Dallas, Texas?

A. Yes, sir.

Q. Would you please refer to page 11 of this publication entitled "Welcome Aboard"?

A. Yes, sir.

[59] Q. What does it say on page 11, with regard to new employees?

A. Well, page 11 tells them how they will get their mail.

Q. What does it say?

A. It says: "Mail—mail is forwarded to each port in advance of arrival of the ship. Your mailing address is John Doe, S/S and the name of the ship, Mobil Oil Corporation, Gulf-East Coast Operations, Post Office Box 3444, Beaumont, Texas 77704."

Mr. Hambright: We offer this as Plaintiff's Exhibit 4.

The Court: It will be accepted in evidence.

(Reporter's Note: Whereupon Plaintiff's Exhibit No. 4 was received in evidence.)

By Mr. Hambright:

Q. Is there any other kind of pamphlet similar to "Welcome Aboard" that is put out in one of your branch offices or is this the only one you use?

A. No, sir, this is the only one.

[60] Mr. Hambright: Would you mark that as P-5, please?

The Clerk: Plaintiff's Exhibit No. 5.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit No. 5 for identification.)

By Mr. Hambright:

Q. Mr. Knepper, I show you what is marked Plaintiff's Exhibit 5, and would you please identify that for the Court?

A. This is a copy of a paper we call the "Mobil Mariner". The "Mobil Mariner", which is like an employee's newspaper for the people in the fleet. This particular one is No. 61, July, 1971.

Q. All right, sir, would you exhibit that so that the Court might see the face of it for the purposes of my question, somehow, maybe I can give you—will you tell me where this is published?

A. Well, this is written and published in Beaumont, Texas.

Q. Under your supervision and direction?

[61] A. Yes, sir, that is correct.

Q. Does this go to all employees in the bargaining unit, covered by the labor contract that is the subject matter of this lawsuit?

A. Yes, sir, it does.

Mr. Hambright: We offer that, Plaintiff's Exhibit 5.

The Court: All right, it will be received.

(Reporter's Note: Whereupon Plaintiff's Exhibit No. 5 was received in evidence.)

By Mr. Dixie: What was the particular part of that that you called his attention to?

Mr. Hambright: I asked the witness to identify it and

the place of publication and on page 1, I called his attention to.

Mr. Dixie: Thank you.

By Mr. Hambright:

Q. Would you clarify that, please? State where that is published and what it says at the top of the front page.

[62] A. I am not sure—

Q. On page 1, at the top, does it show—

A. Published for employees, Gulf-East Coast Operations and under that it says Mobil Oil Corporation, Post Office Box 3444, Beaumont, Texas, 77704. Does that—

Q. Yes.

Now, Mr. Knepper, speaking about your employees for a moment, I believe you testified that all personnel procedures are conducted in your office in Beaumont, Texas, by yourself and various assistants, is this correct?

A. Yes.

Q. Where are your employees hired?

A. Well, in Beaumont, Texas, and also in our New York office.

Q. If someone was hired in Beaumont, Texas, would the matter be exclusively within your control?

A. Yes, sir.

Q. Would you make the decision whether this man was hired or refused employment?

A. Well, I would or the subordinate might be [63] delegated.

Q. Mr. Shanigan is your personnel director that you identified this morning. Is he a resident of Beaumont, Texas?

A. He is, yes.

Q. Now if someone were hired in the New York office would that come within your jurisdiction in any way, and, if so, how?

A. If he had been hired from the New York office he would be hired by one of the many people in our branch office there who reports to Captain Papich and Captain Papich reports to me.

Q. Captain Papich being the Beaumont resident who works in your office?

A. Yes, sir.

Q. And you say he would be hired by the personnel in the branch office in New York, is that one of these individuals you identified this morning that works for you in New York?

A. That is correct, yes, sir.

Q. And you set their own pay scale and so forth?

A. That is correct, yes.

Q. All right, sir, now looking back over the [64] period of time let's say since the inception of the present labor contract on November 1st, 1969, and stretching from that time down to today, would it be fair to say that you have employed as new employees or re-employed, employees, as many as two or three hundred people?

A. This is over the entire life of this agreement?

Q. Yes.

A. Yes, sir, that is a fair statement.

Q. All right, sir, would 300 come closer than 200?

A. I would think it would, yes.

Q. All right, sir, out of this group would you give the Court your best estimate as to the number hired in Beau-

mont directly and those hired in New York by your branch man who reports to you?

A. Well, it is a very difficult problem, probably sixty percent in Beaumont, and forty percent in New York.

Q. All right, sir, now those who are hired in New York, are they or not in many cases reemployees of persons who formerly worked for your company?

[65] A. Yes, sir, that happens very frequently in our business.

Q. Is it a fact that the New York applicant who seeks employment at your branch office have to obtain clearance from Beaumont? Do you approve the application before they are hired?

A. Yes, the applications are approved and also before the offer of employment is made, determination is made in Beaumont whether or not any vacancy we have is more conveniently filled from New York or from Beaumont.

Q. All right, sir, now over this same period of time, November of '69 to date, can you give me an estimate of how many employees are subject to the labor contract in question who has been terminated for just cause?

A. I think I have a notice, but I need to take a look at it.

(Reporter's Note: Whereupon there was a short pause.)

A. Yes, I believe 79 employees have been terminated for cause during that period.

Q. 79?

A. Yes, sir.

[66] Q. Would you please tell the Court where the decision was made to terminate each one of these 79 people? Who made the decision and how it was effectuated?

A. Well, the final decision is made in Beaumont. Maybe a case or two where a Captain would discharge someone on

ship and then we would review the case and the final decision is made in Beaumont, and on some occasions the initial decision—

Q. Who would be the likely participant in such a decision in Beaumont?

A. Well, we have a personnel committee who reviews the case and then come to me with their recommendations and I make the final decision yea or nay.

Q. Does that personnel committee consist of employees who reside in Beaumont, and work in the office here?

A. Yes, sir, they all are people that I mentioned this morning, as reporting to me.

Q. I don't know if you put a total on that, the number of people that report to you here [67] locally.

A. No, I didn't.

Q. Would you enlighten me on that, Mr. Knepper?

A. There is four people that report directly to me.

Q. I am speaking total working force in your office here, that's in your engineering, budgeting, personnel, all of those different groups.

A. There are eighteen such people.

Q. All right, sir, now on these decisions to discharge a person, are those decisions exclusively within your control here in Beaumont, Texas?

A. Yes, sir.

Mr. Hambright: If it please the Court, I am laboring under my first bifocal glasses, which I got last Friday. It is clogging me down on my finding my way through some of these documents.

The Court: We will be as understanding as necessary.

By Mr. Hambright:

Q. Now, Mr. Knepper, in regard to your testimony that some monetary expenditures are made for [68] sickness and disability, maintenance and cure, things of this nature, which I believe you testified was handled by a claims division in New York City, is this correct?

A. Yes, sir, that is correct.

Q. Would you tell me, and I think you said that was a minute part of the overall expenditure, but directing yourself to that, did you or not have an occasion within the last few months to have a man by the name of Parsons, who did have such a claim?

A. Yes, sir, that's correct.

Q. Where is Mr. Parsons' residence, what is his home address, if you know?

A. I don't know the city, he lives in Florida though.

Q. All right, sir, did he become disabled or alleged that he was disabled within the last say year or so?

A. Yes, sir, he had a cardiac condition.

Q. All right, sir, excuse me, did you add something to that?

A. No.

Q. Did he receive certain payments from this [69] claim division in New York?

A. Yes, he did.

Q. Did your office in Beaumont, Texas have any part in the determination of how much he got and this sort of thing?

A. Yes, part of it, you know, the basic schedule of benefits is included in the labor agreement and part of it is statutory.

Q. Did you or not have an occasion to issue any instructions to the New York branch as to the manner of handling payment with Mr. Parsons?

A. Yes, sir, they can only administer a claim if we assigned—don't assign a man to them for a claim, the claims administration won't do anything.

Q. Is your assignment of this matter to New York, is that similar to what we sometimes refer to as employing a claim adjuster?

A. Yes, sir, I believe that is a good one.

Q. Did Mr. Parsons, therefore, receive any payments by the company letters from New York?

A. Yes, he did.

Q. How did Mr. Parsons get along with his [70] disability?

A. Well, it was disability that really meant that he had to find a different kind of work. He couldn't do—he couldn't exert himself any longer and I would say he was very unhappy about losing his—

Q. Ultimately was it necessary to take any action in this case?

A. Well, we had to terminate his employment because he was unable to be a seaman any longer.

Mr. Hambright: Would you mark this, please?

The Clerk: Plaintiff's Exhibit No. 6.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit No. 6 for identification.)

By Mr. Hambright:

Q. Mr. Knepper, I show you what has been marked as Plaintiff's Exhibit 6. Would you please identify that for the Court?

A. Yes, sir, this is a letter that we wrote to Mr. Parsons, which we had to explain to him [71] that because of medical opinions we had received we couldn't continue his employment any longer.

Q. I notice the letter is dated February 25th, 1972, and it is signed by you.

A. That is correct.

Q. Is this part of the ordinary sequence on matters of this nature?

A. Yes, sir, this is our regular practice.

Q. Are you the man that made the ultimate decision or not to fire him?

A. Well, I am.

Q. Or to terminate him for disability?

A. I am.

Q. I notice your letter refers to an examination by a Dr. Stewart. Would you please identify Dr. Stewart?

A. Dr. Stewart is a physician employed by Mobil Oil Corporation, whose clinic is in the Beaumont Refinery.

Q. Is he a native or at least a resident citizen of Jefferson County, Texas?

A. Yes, sir.

Q. Dr. Stewart?

A. Yes.

[72] Q. All right, I notice your letter refers to a Dr. Lombardo. Would you please identify Dr. Lombardo?

A. Dr. Lombardo is a heart specialist, also a resident of Beaumont.

Q. He is likewise a resident of Beaumont?

A. Yes, sir.

Q. Did he examine this man at someone's request, your's or the man's?

A. Yes, sir, at our request actually.

Mr. Hambright: May we offer that as Plaintiff's Exhibit 6?

The Court: All right.

(Reporter's Note: Whereupon Plaintiff's Exhibit 6 was received in evidence.)

By Mr. Hambright:

Q. Mr. Knepper, do you recall an occasion back in September of 1969, when your organization here in Beaumont and the Union representing the employees had a disagreement?

A. Well, I venture to say we may have had one then, I don't know what you are alluding to.

[73] Q. With specific reference to an alleged complaint by the Union in regard to vacation benefits which resulted in an NLRB charged filed by the Union. Do you recall that incident?

A. A Labor Board judge?

Mr. Hambright: Would you mark this, please?

The Clerk: Plaintiff's Exhibit No. 7.

A. Yes, sir, I recall this incident now.

Q. All right, sir, the document has been marked for identification as Plaintiff's Exhibit 7. It is dated September 30, 1969. Did you receive that from the Houston, Texas Regional Office of the National Labor Relations Board?

A. Yes, sir, this was transmitted to us.

Q. I believe your name is on there in Paragraph (d) as —is that your name?

A. Yes, John Knepper, Manager.

Q. And the address of the employer is stated on there. What address do they give for the employer?

A. Our mailing address, P. O. Box 3444, Beau [74] mont, Texas.

Q. And who signed this charge with the Labor Board, down under the declaration?

A. James R. Watson, Jr.

Q. Do you know of your own knowledge that he is an attorney in Houston, Texas? Do you know that, Mr. Knepper?

A. I believe that is the case, yes, sir.

Q. Do you know of your own knowledge that he was then a partner or at least an associate of Mr. Chris Dixie?

A. I believe that could be true.

Q. Did you get a letter from the Labor Board transmitting this charge and telling you to defend yourself? Did that letter show a copy went to Mr. Dixie's law firm in Houston?

A. I believe it did, yes, sir.

Mr. Hambright: We offer this Labor Board charge as P-7, Your Honor.

The Court: All right.

(Reporter's Note: Whereupon Plaintiff's Exhibit No. 7 was received [75] in evidence.)

By Mr. Hambright:

Q. Now, Mr. Knepper, following the execution of the labor contract marked Plaintiff's Exhibit 1, or at least its

effective date on November 1st, 1969, did you thereafter come into information that one section of that contract was in question?

A. Yes, sir, I did.

Q. What was the information that you received?

A. Well, I was advised that a review of Mobil counsel had reason to believe that that clause was illegal in the State of Texas, and that as the Texas employer we would be violating Texas law if we continued with it.

Q. All right, sir, now in that regard could we just take a copy of Plaintiff's 1 and draw a box around the provision in there that they said was—I think it's page 2—the section is the second on 2b. Would you just draw a box around that, please?

A. (Witness indicating).

Q. All right, now, Mr. Knepper, in connection [76] with this, did you receive a copy of the Texas Attorney General's opinion No. WW1018?

A. Yes, sir, I did.

Mr. Hambright: Mark this, please.

The Clerk: Plaintiff's Exhibit No. 8.

Mr. Hambright: Thank you, ma'am.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit No. 8 for identification.)

By Mr. Hambright:

Q. Did you receive a copy of this opinion?

A. Yes, sir.

Q. Now, Mr. Knepper, about what month did you first learn of this problem?

A. Well, it was late in December or early in January of 1969, or early January of 1970.

Q. Did you take any action with the Union representatives?

A. Yes, sir, we did meet with the local Union officers and—

Q. Did you tell them what your position was?

A. Yes, sir, we did.

Q. Did you tell them that you were or were not [77] going to enforce this clause, what did you tell them?

A. Well, we told them that we didn't think that either they or we should, they or we should be in position of doing something that's illegal, that we had, as far as we could see, no choice but to discontinue the enforcing of that particular section of the contract.

Q. Do you recall the names of the Union representatives who you met with in January of 1970 and gave this word to?

A. I believe this was the International representative named Ed Steiger. Mr. Perrio, Mr. Sanhueza.

Q. All right, sir.

A. There were two other Union officers but I am not a little—I am a little unclear at the moment but as to whether Mr. Maston was there or not.

Q. Did the Union make any immediate reply?

A. Well, of course, they were unwilling to abandon the charges and they wanted to really look into it to see what, I suppose, their people say [78] about the legality of it and so forth.

Q. Did they ever get back to you in writing or officially about that prior to April of 1970?

A. No, although we discussed it informally from time to time.

Q. In April of 1970 did you or not deem it necessary to take further action?

A. Yes, sir, we wrote them in a letter in April of '70, saying we just could no longer honor that particular clause.

Q. And did you at this time, when you wrote this letter, did you enclose anything with it?

A. Yes, sir, we enclosed a form letter which we would inform them that we would have handed to each new employee and ask them to sign it as evidence he had received it. That form letter said that the membership, at the bottom there, was voluntary, but they would continue to be members.

Mr. Hambright: Mark this, please.

The Clerk: This is Plaintiff's No. 9.

(Reporter's Note: Whereupon it was marked Plaintiff's No. 9 for identi [79] fication.)

By Mr. Hambright:

Q. This is marked Plaintiff's 9, is that a true copy of what you sent to the Union on April 23rd, 1970?

A. Yes, sir.

Mr. Hambright: I call the Court's attention to a statement in the letter of April 23rd, 1970, to the Union advising the Union that Article 1, Section 2b of the collective bargaining agreement is invalid under Texas law and the company's statement that it believed that neither itself nor the Union should put itself in the position of enforcing provisions contrary to law.

Q. Is this the substantial import of that letter?

A. Yes, sir.

Q. Now the certificate that you have on there, is this what you present to employees and ask them to sign?

A. Yes, we do.

[80] Q. Would you—it is very short, would you just read that, Mr. Knepper, and keep your voice up at the end of each sentence there?

A. Yes, sir. It says: "Unlicensed employees in the Gulf-East Coast fleet are represented for collective bargaining purposes by SVTMA Local 8-801, OCAWIU. As an unlicensed employee, the Collective Bargaining Agreement between the Union and the Company determines your wages, hours, and other conditions of employment. In order that you may have a voice in these matters you may wish to become a member of this Union. Such a membership is voluntary on your part and the Company neither encourages nor discourages membership. Under the current agreement if you become a member of the Union, you must continue to be a member and/or pay the regular Union dues during the term of the Agreement. I acknowledge and understand the foregoing." And there is a place for signature and the date.

Q. All right, sir, now the last sentence tells them, as I read it, that membership was voluntary, [81] but if they do become a member then they have to stay a member or else pay the dues?

A. Yes, that's correct.

Q. Is this your interpretation of that?

A. Yes, sir.

Q. Now looking at your—

Mr. Dixie: May I clarify a point here for the court? In this Article 2 the witness drew a block around Paragraph (b) and it is my understanding that Paragraph (b) is the one that is in issue before this Court, is that right, and not the rest of Article 2?

Mr. Hambright: I am not so sure of your terminology of what may be in issue, but I will say that the one with

the box around it is the invalid portion which we seek to have declared invalid in this case. Other parts of the labor contract could become an issue in the case for various reasons.

Mr. Dixie: Then you are not trying to declare invalid Paragraph (a) or (c)?

[82] Mr. Hambright: May I have one moment?

The Court: All right.

Mr. Hambright: The portion of Article 1, Section 2, with the box drawn around it is Paragraph (b), little (b). This is what we have asked the Court to declare void and unenforceable. It is an agency shop clause and may we stipulate that it is a typical shop clause before I finish the response—

Mr. Dixie: I think we can call it that, Your Honor. I can't answer counsel, you will say that you are not attacking (a) or (c)?

Mr. Hambright: I will continue with the statement of admission if that is all right.

The agency shop clause of said paragraph (b) is what we are attacking. Sub-paragraph (a) is what we term as maintenance of membership clause. It ties in with the letter Mr. Knepper [83] wrote which says if they once become a member of the Union, which is voluntary under the company's position, but once they become a member they will continue to be a member or pay dues. The company is not seeking to set aside that in this litigation. Paragraph (a) is not under attack in the pleadings on file in this case.

I have personal reservations about that, but the Court may, on its own motion, decide that Paragraph (a) should be adjusted, but this has not been a question.

Paragraph (c), the escape clause, likewise is not under attack.

May I continue now with Mr. Knepper?

The Court: Yes.

By Mr. Hambright:

Q. Now, Mr. Knepper, have you used this certificate in connection with hiring each new employee since the date you notified the Union you were going to do so in April of 1970?

[84] A. Yes, sir, the people who actually have the personal contact with the new employees have been instructed to do so under my knowledge and have not failed to do so.

Q. All right, sir, now to clarify one thing about your letter and terminology, your letter is addressed to the Sacony-Vacuum Tankermen's Association Local 8-801 OCAW IU. The Union has changed its name since that date, has it not?

A. Yes, that's right.

Mr. Hambright: May we stipulate, Mr. Dixie, that the addressee of that letterhead is in fact the Local Union, which is the defendant in this case?

Mr. Dixie: Yes.

By Mr. Hambright:

Q. Now, Mr. Knepper, after you inaugurated this procedure in April of 1970, of obtaining this acknowledgment from the employees as to the voluntary nature of Union membership, did you receive thereafter for the rest of the year 1970 receive any dispute or controversy from the Union about the letter?

[85] A. Well, they complained.

Q. The remainder—excuse me.

A. They complained about it, yes, they didn't like it, they would have liked us not to use it or something different.

Q. Was this in the nature of an oral or verbal complaint or did they write you?

A. They wrote and asked for a meeting, which we discussed it and we discussed it at other meetings.

Q. All right, sir, did they take any final action the rest of 1970 and on down until July of 1971?

A. No, they didn't really take any action on the matter.

Q. During that period of time, which I guess would be from April of '70 to April of '71, plus another two or three months, did you continue to use the voluntary certificate?

A. Yes, sir.

Q. All right, sir, what happened in July and August of 1971?

A. Well, I am not absolutely sure of the date, but some time late in August, either late in [86] July or early in August, we received a copy of a news letter that the Union had put out to their people, to their membership.

The Clerk: Plaintiff's 10.

(Reporter's Note: Whereupon it was marked as Plaintiff's Exhibit No. 10 for identification.)

By Mr. Hambright:

Q. Plaintiff's 10 was marked, Mr. Knepper, is that the news letter?

A. Yes.

Q. Is it in the ordinary course of life between you and your company and the Union, is this, to your knowledge, circulated among the employees in the bargaining unit?

A. Yes, this is, you know, fairly common form of communication, from my observation. The Union does write to the membership under this sort of format.

Q. Would this be an expression of news items from the defendant Unions in this case to their members?

A. Yes, the method of communication.

Q. Will you please read for us the second para- [87] graph in that letter?

A. The second paragraph states: "We wish to resolve at the onset the question regarding Union membership. Our contract is clear on this point and should be read by all members. Section 2 of the contract provides in effect that persons who are members when the contract was signed or any new employees must remain or become members of the Union or pay dues to the Union, and then underlined it says: "This is a condition of employment".

Q. All right, sir, I am going to offer that in a moment, so we don't lose our place would you draw a box around that paragraph that I have asked you to read?

A. (Witness indicating.)

Q. Now the second line up from the bottom of that document, Mr. Knepper, I believe you stated they must remain or become a member, is that correct?

A. Yes, it says any new employees must remain or become members of the Union.

Q. Will you underline the words there?

A. (Witness indicating.)

Q. Now what was the second paragraph following [88] that?

A. The next paragraph says: "As far as this Union is concerned any employee in our division of Mobil will either join our Union or pay dues to the Union. We intend to exercise our right to have the employment of any unlicensed seaman terminated who does not join or pay dues to the Union. We hope this answers all questions regarding this point.

Q. Would you draw a box around that and then we will stop drawing?

A. (Witness indicating.)

Q. Now, Mr. Knepper, I take it the rest of that news letter pertains to non-relevant matters not connected with this lawsuit, is that correct?

A. Yes, sir, it deals with other matters of interest to the Union and their membership.

Q. All right, sir, now I believe you testified you weren't positive as to the exact date that you got that, but it could have been around the early part of August, 1971, is this correct?

A. Yes, sir.

Q. Do you know of your own knowledge that thereafter this lawsuit was instituted in Septem [89] ber of 1971?

A. I do, yes.

Q. All right, have you continued during the pendency of this lawsuit to use the voluntary certificate for all new hired employees that you identified a moment ago?

A. Yes, sir, we have.

Q. Mr. Knepper, do you know of your own knowledge when this suit was instituted, was it in September of 1971, the Union, the International Union was served the same date?

A. Yes, sir, I know that is true.

Q. And the Local Union was served the next day?

A. That's correct.

Q. Now who was served as a representative of the Local Union?

A. The Local Union?

Q. The Local Union.

A. Mr. John Perrio.

Q. Is Mr. John Perrio one of your employees?

A. Yes, sir, he is.

Q. Does he occupy a position with the Union?

A. Yes, sir, he is the President of the Local.

[90] Q. The President of the Local?

A. Yes, sir.

Q. Do you know where he was served, the process, of your own knowledge?

A. In his office in the Goodhue Building.

Q. Do you speak of the Goodhue Building in Beaumont, Jefferson County, Texas?

A. Yes, sir.

Q. Does the Union also have an office there?

A. Yes, sir.

Q. Is Mr. Perrio a resident of the State of Texas?

A. Yes, sir.

Q. I believe the Union also maintains an office in New York City, is this correct?

A. That's correct, yes, sir.

Q. Is this for purposes of anything to do with finances, by any chance?

A. I don't believe I understand your question.

Mr. Hambright: Strike that question, we will develop it later.

By Mr. Hambright:

Q. Now, Mr. Knepper, on these employees in this [91] bargaining unit, which you have said numbered some 279, I believe, is unemployment compensation benefits payable from any state?

A. Yes, sir, we pay a contribution to the Texas Employment Board.

Q. All right, sir, is Texas the only state that administers the unemployment compensation for all of these employees?

A. Yes, sir, it is. If an employee lives in another state he must return to Texas for employment benefits.

Q. All right, sir, is it your practice on an annual basis to make a payment to the Texas Employment Commission in regard to the premium on this unemployment insurance?

A. Yes, sir, we are required to pay one-half of one percent of the first $3,000.00 the man earns every year.

Q. Do you know how much money you paid, for instance, in 1971, to the State of Texas?

A. Yes, sir, $1,776.42.

Q. As I understand your testimony, you made no such payment to any other state and that the State of Texas exclusively administers this in [92] surance coverage?

A. Yes, that's correct.

Q. I will ask you also on your physical plant out here in Beaumont, where your office is located, do you know of your own knowledge that ad valorem property taxes on that facility is paid to the State of Texas and County of Jefferson and perhaps the school district?

A. Yes, that is true, they are.

Q. Now, Mr. Knepper, again referring to the labor contract, would you—

Mr. Hambright: Your Honor, may I approach the witness to show him this?

The Court: All right.

By Mr. Hambright:

Q. Would you identify Section 11 on page 6 of this contract?

A. Yes, sir, Section 11 is termed "validity clause".

Q. For purposes of my question may I read this paragraph, Your Honor?

The Court: It isn't necessary. If you will call it to the Court's at [93] tention, the Court can read it.

Mr. Hambright: I don't know where the other copy—excuse me, Your Honor, I didn't know you had the other copy.

Q. All right then, in regard to that, Mr. Knepper, I see that provision is made that in case something is declared invalid the parties will again meet within ten days to work out a new agreement on those matters that were invalidated.

I will ask you if this Court does declare that the agency shop clause or provision on page 2 is invalid as manager of this organization would you carry out the mandate of Paragraph 11 and meet with the Union on request in order to attempt to work out some type of other provision?

A. Yes, sir, I would.

Q. While we are on the labor contract and the Court has the document, if I may, could I refer to the preamble of the contract on page 1, which states that the agreement is between Mobil Oil Corporation Marine Transportation Department, Gulf-East Coast Operations and that that organization [94] I just described as stated to be the company for purposes of this labor contract. Is this true, Mr.

Knepper, in the sense that that organization I just described of which you are the manager, is known throughout this document as the company?

A. Yes, that's correct.

Q. Now, Mr. Knepper, in this labor contract is there a provision in here in regard to the grievance procedures?

A. Yes, sir, there is.

Q. You probably know this one from memory, on page 7, under the heading "Grievance Procedures", in Section 13, I will ask you how many steps are enumerated there?

A. There are five steps.

Q. Now the fifth step, is that the top level?

A. Yes, that is as far as the grievance goes.

Q. All right, sir, now at the fifth level is that the last chance that either the company or the Union has ordinarily to resolve the grievance before it goes into arbitration?

A. Yes, sir, that is the last step short of arbitration.

[95] And I notice that your labor contract is not, does not specify in Section 13 that any of the preliminary levels, first, second and third, or fourth, have to be gone through in any particular location. Is this true, there is no geography specified as to where this can happen?

A. Yes, sir, that's true.

Q. But the fifth and top level is stated to be at Beaumont, Texas?

A. That is correct.

Q. Is this the way it actually works?

A. Yes, sir.

Q. All right, sir, now going back over a period of time of maybe two or three years, how many of those fifth level

grievance meetings have actually been conducted in Beaumont, Texas?

A. Well, I don't have the accurate count, but quite frequently.

Q. Would you—

A. Several times a month.

Q. Would you say that you actually had a formal top-level grievance meeting under the fifth level here as often as maybe twenty times in the last [96] two or three years?

A. Yes, I would say so, yes, sir.

Q. Were you present on those occasions?

A. Yes, sir.

Q. Out of those some twenty top-level grievances, how many in fact proceeded on with—on to arbitration, the last phase, say since November of 1969, under the present labor contract?

A. Well, grievances that arose under the present contract I believe four have been arbitrated.

Q. Four have been arbitrated?

A. We have had during the term of this contract, we have had some arbitrations that were carry-overs and grievances that were under the prior contract.

Q. All right, sir, now where were the actual arbitration hearings on these cases, these four cases that arose under this contract and perhaps one or two carry-over cases from a prior labor contract?

A. Where were they held?

Q. Yes.

A. In the American Arbitration Association offices in New York City.

[97] Q. All right, sir, was this hearing at the Triple A office in New York City, was that conducted by the—or sponsored by the Triple A, as the organization that supplied the arbitrator?

A. Yes, under our agreement, the agreement calls for it to be done under Triple A auspices.

Q. Does your agreement, does your labor contract say where you must go to arbitrate?

A. No sir, I don't believe it says, it doesn't specify any locale for our hearings.

Q. All right, sir, now in reference to these twenty or more fifth level grievances in Beaumont, Texas, were you the man that heard those twenty odd fifth-level grievances?

A. Yes, sir.

Q. Did you have perhaps Mr. Shanigan or some other member of your staff to assist you?

A. Yes.

Q. Sir?

A. Sometimes several members fell in with the daily work, Captain Papich and Mr. Dayton, why I would have them help me.

Q. At the last time of these top-level hearings, as the last step in the grievance process, did [98] you have the option, if you so desired, to make a settlement or adjustment with the Union?

A. Yes, sir.

Q. Did the Union, likewise, have an option to agree with you on some solution?

A. I believe, yes, sir.

Q. If my arithmetic is correct then, the twenty odd case, only four of them, perhaps only four of them pro-

ceeded to arbitration within this last some two-year period of time, is that correct?

A. That's correct.

Q. Would it have been your function, if you had so desired, to settle all of them if you had decided to do so?

A. Yes, sir, I could have done so.

Q. Would this decision be solely and exclusively up to you, Mr. Knepper?

A. Yes, sir.

Q. Did anybody else have any say-so one way or the other on how you decided to dispose of that claim other than your own staff here or perhaps your advisors?

A. Well, I live with it, I have the decision- [99] making authority for that.

Q. All right, sir, now in addition to these grievances, are there other business matters which Mr. Perrio of the Union, the President and perhaps other Union officers have discussed with you at your office in Beaumont, Texas?

A. Yes.

Q. Sir—go ahead.

A. There are a number of subjects that come up that could be grievances that haven't formalized and carried through the steps and we discuss those and often we can dispose of them easily. Sometimes we can't and they do become formalized and come back as written here.

Q. Would you give me any estimate of how many separate, independent subject matters in the day-to-day administration of this labor contract have been so presented to at your office in Beaumont, by these Union officers since November of 1969?

A. Well, I haven't kept a running record. I would guess maybe 80 or 100.

Q. All right, sir.

A. I have no accurate count.

[100] Q. All we are asking is your best judgment.

In addition to that have you at your office in Beaumont received long-distance telephone calls from the Union officers, perhaps when they were in New York or elsewhere?

A. Yes, sir, that occurred.

Q. Over this same period of time which I am selecting for convenience, of course, from November, '69 down to date would you give me an estimate of how many separate, individual long-distance telephone calls that you or Mr. Shanigan or one of your other staff members in Beaumont, has received from Union officers either in New York or elsewhere, concerning employee relation matters under this labor contract?

A. Well, conservatively, maybe two or three a month. Probably more than that but it was two a month, about sixty, I guess. This is not from any records.

Q. Now further reference to these arbitrations, you testified that four cases had been arbitrated under this particular labor contract and maybe some carry-over cases. Have you checked to see the total number of labor arbitrations between [101] these parties, say back in 1965 or 1966, somewhere in that area down to date?

A. Well, I count nine from 1963 through the present date.

Q. Nine cases?

A. Yes, sir.

Q. All right, sir, do you know whether or not one of those cases involved an employee named Kohler (sic)?

A. Yes, sir.

Q. Go ahead.

A. There was a case actually prior to my tenure here but I am familiar with the case.

Q. All right, can you tell us what the stipulated issue was in the Kohler (sic) arbitration case?

A. This was a case that involved port overtime and it was stipulated that it would be something along the lines that if the ship loaded in Corpus Christi, and then proceeded to Houston, and loaded further and then proceeded to Beaumont for further loading and then a man joined in Beaumont, would he be entitled to the loading [102] overtime, as it is called, for the full cargo.

The idea of the case that he wasn't really—

Q. Speak louder, please.

A. I say the idea of the case being that he wasn't on board during the time the full cargo was loaded and there was a question whether he was entitled to full overtime or only a part or none.

Q. And that—would you say that the question of whether or not he got overtime or straight time would have to be decided by construction of the labor contract?

A. Definitely, yes, sir.

Q. And the stipulated issue in the Coler case was submitted to the Board of Arbitration on the examples you just gave me or substantially the example you gave me?

A. Yes, sir, as I recall it.

Q. Will you give me the approximate date of that case, please, sir?

A. My notes say that it was heard in April, 1966, so I presume it must have arisen early in 1966.

Q. All right, now I would like to ask you about [103] another arbitration involving Nelson Cash, C-a-s-h, do you recall the approximate date of the Nelson Cash arbitration?

A. That was heard in September, 1968.

Q. What was the nature of the dispute, without stating the issue again, was it a work assignment or some other—

A. Yes, it had to do with what work a pumpman could be assigned within the meaning of the agreement.

Q. All right, sir, can you tell me where Mr. Nelson Cash lives or then did live?

A. He was a resident of Vidor, Texas.

Q. Vidor, Texas?

A. Yes.

Q. Do you recall an arbitration involving a case in 1969—

A. Yes, sir, that was a matter involving promotion under the seniority provision of the agreement.

Q. Is that promotions, is that covered by this labor contract?

A. Yes, sir, it is.

Q. A party sometimes disagrees as to what those [104] provisions actually mean?

A. Yes, sir.

Q. Did this particular case involve a man who wanted to be promoted to boatswain?

A. Yes, that's correct.

Q. That was Mr. Libe?

A. Yes, sir.

Q. Where did that—where did he live?

A. He lived in Crockett, Texas.

Q. Do you know of an arbitration in 1970, involving a Mr. Bell, Mr. Phillip Bell?

A. Yes, sir.

Q. Can you tell me what the nature of the dispute was in the case of Mr. Bell?

A. This was a dispute over his status, whether there was a disciplinary status or a vacation status and it arose because Mr. Bell left his ship in Baytown, Texas, without being properly relieved and subsequently his relief didn't show up. He had proceeded home to Nederland, and we didn't have a man—

The Reporter: Keep your voice up, it is trailing off.

A. I am sorry. So we didn't have a man to [105] relieve him at the time, so we said that he was on a disciplinary status until we decided what should be done with him and his claim that he was on a vacation status.

Q. You say he left the ship in Texas City or Baytown somewhere and went to Nederland, you are talking about Nederland, Jefferson County, Texas?

A. Yes, sir.

Q. Is that his home?

A. Yes, sir.

Q. Did you hear this grievance at the fifth level before it proceeded on to arbitration?

A. No, sir, I did not, my predecessor did.

Q. Your predecessor?

A. This was a carry-over.

Q. That was one of the carry-overs?

A. Yes, sir.

Q. Do you know of your own knowledge it was heard in Beaumont, Texas?

A. Yes, sir, I believe it was from reviewing the record.

Q. All right, sir. Do you know about an arbitration involving one cook, Wayne Kortz?

A. Yes, sir.

[106] Q. What type of case was that?

A. Well, this was a case involving a discharge, whether or not the man had been discharged justifiably. We said that he had and the Union thought he had not.

Q. Do you know where Mr. Wayne Kortz makes his home?

A. Yes, sir, he is from Vidor, Texas.

Q. Now, Mr. Knepper, at the outset of this trial we discussed the labor contract's place of execution, were you a party to the collective bargaining negotiations that led up to this labor contract?

A. Yes, sir, I negotiated for the company for this contract.

Q. Where did the negotiations take place?

A. New York City.

Q. Why, if you know, did they take place in New York?

A. Partly because that has always been our practice and a more large part, I believe, for the convenience of the Union.

Q. You say the convenience of the Union?

A. Yes, sir.

[107] Q. Are you now engaged in collective bargaining negotiations for a successor contract to the present contract.

A. We are.

Q. Where are those taking place?

A. In New York City.

Q. Have you requested anything in regard to the site of those negotiations?

A. Yes, sir, I have stated that it is very unwieldy for me to run my business and be in New York City both, and I requested that we remove the negotiations or at least have a portion of them in Beaumont, where I can be close to my office.

Q. What response did you receive?

A. Well, the Union is reluctant to do this. As a matter of opinion, I think primarily because their advisors are based in New Jersey.

Q. All right, sir, back in the 1969 negotiations were you at that time a resident citizen of Beaumont?

A. Yes, I was just in the process of moving, sir.

Q. Well, during the continuing of these negotia- [108] tions did you have an occasion to travel to New York to attend these meetings?

A. Yes, sir.

Q. Did you take Mr. Shanigan from Beaumont with you on any of those trips?

A. Yes, sir, all of them.

Q. Were you the chief negotiator for the company?

A. I was.

Q. Was the strike in progress during any of this time?

A. Yes, sir.

Q. Did you then have eight tankers or nine tankers, or do you recall?

A. We had nine ships at that time.

Q. Did you ultimately sign with the Union a hand written document at the end of these negotiations?

A. Yes, sir, we did.

The Clerk: Plaintiff's Exhibit 11.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit No. 11 for identification.)

[109] By Mr. Hambright:

Q. I show you what has been marked as Plaintiff's Exhibit 11, which consists of two handwritten sheets on legal size paper, Xeroxed. Is this a copy of the memorandum that was signed in New York, at the conclusion of those negotiations in 1969?

A. Yes, sir.

Q. Now attached to that there is a typed-up instrument, one and a fraction pages long, which purports to be a more clear portrayal of the agreement, was this typed up under your instructions to provide quick reading of those handwritten sentences?

A. Yes, sir.

Q. On Plaintiff's Exhibit 11 I notice the signature "John T. Knepper"; the date, October 30, 1969; and a couple of names for the Union, F. J. A. and D. H. S. Who are those people, please, sir?

A. Well, F. J. A. would be Frank Avery, who was then President of the Union, and D. H. S. would be Donald Sanhereza, who was financial secretary at the present.

[110] Q. I also notice it is signed by a gentleman, R. L. Clark, who is he?

A. Mr. Clark is the International representative for OCAW. I believe he is based in Providence or Boston, somewhere in the East.

Q. All right, sir, I notice the first item has to do with retaliation against people who took part in a strike or activities during strike. That seems to be item one. Did

you have an agreement that you would let them come back to work and not take any retaliation?

A. Yes, mutual agreement, I mean no retaliation on either side.

Q. And would you state whether or not there was any picketing or violence or blocking of ingress or egress during this strike?

Mr. Dixie: You would think this is a jury trial, Your Honor, I object to that as not relevant to any issue in this case as to what happened during the strike.

The Court: Do you insist on it?

Mr. Hambright: No, sir, I do not, I was only trying to develop it [111] because of this pencil and handwritten notation. I don't think it is essential.

The Court: The objection will be sustained.

By Mr. Hambright:

Q. All right, now, Mr. Knepper, I see that when you get down to Item 2 there you talk about the terms and the provisions of the collective bargaining agreement between the parties and state that that is subject to ratification by the Union. Do you recall this?

A. Yes, sir.

Q. Is this reference in Paragraph 2 intended to mean collection or work sheets and pages and part handwritten, perhaps part types a[illegible]art Xeroxed that might have been viewed for some period of many weeks of collective bargaining?

A. Yes, sir, it was.

Q. What was the understanding you had about all of that collection of pages that you state here that was going to be submitted for ratification to the Union?

A. Well, that document would be put into a [112]

smooth, final form and when ratified that both sides would sign it consummating the agreement.

Q. Do you know of your own knowledge whether or not the document was in fact placed in smooth form?

A. Yes, sir, it was.

Q. Where was this done?

A. In Beaumont, Texas.

Q. Under whose direction was this done?

A. Under mine.

Q. Do you know of your own knowledge whether the Union did proceed to ratify this new contract?

A. Yes, sir, they informed us that it was ratified.

Q. Where was this information delivered to you, Mr. Knepper, that it was ratified?

A. I really don't recall.

Q. All right, sir, did you then proceed to have the document placed in final form here in Beaumont, Texas?

A. Yes, sir.

Q. Did you then meet with the Union officials for any purposes and, if so, where? Tell the [113] Court what it was.

A. Mr. Perrio came to our office when we had it in final form, we gave him copies to approve and be sure that it had what it should, and on that day, I can recall that Mr. Shanigan and I and Perrio, signed, the other Union officers were not in Beaumont and they had to sign their copies also.

Q. I notice that on Page 50 of what is marked Plaintiff's Exhibit 1, there appears to be a signature page and it shows the execution by John T. Knepper, L. A. Papich, and W. J. Shanigan for the company. Do you recall this signature page?

A. Yes, sir.

Q. Was this the page that was signed in your office?

A. Yes, sir.

Q. Now I notice right above that it says the parties have caused these presents to be executed by their duly authorized officers this 18th day of November, 1969. That's the date that you actually signed the document in your office?

A. Yes, sir, but, as I say, all of the people [114] couldn't have signed on that day because some of them weren't in Beaumont.

Q. I understand, but you say that Mr. Perrio did come to your office and physically sign it in your presence at that time?

A. That is my recollection, yes.

Q. All right. While the document was signed on November 18th, in your office, I notice that it relates back and becomes effective November 1st, 1969, is this something that is customarily done in the dealings of labor relations to make the agreement become effective on some even day of the month that the parties so desire to do so?

A. Yes, sir, we have negotiated a number of contracts that were effective retroactively.

The Court: I believe we will have a little recess, Mr. Hambright.

Mr. Hambright: Thank you, Judge.

The Court: We will stand in recess for fifteen minutes.

(Reporter's Note: Whereupon a fifteen-minute recess was taken and court re [115] sumed.)

The Court: Do you have any further questions of this witness, Mr. Hambright?

Mr. Hambright: Yes, sir, just a few, Your Honor.

The Court: All right, you may proceed.

By Mr. Hambright:

Q. I would first like to make sure that we have Plaintiff's Exhibit 11 in evidence, which was this memorandum dated October 30, 1969, appearing in handwritten form and with the typed page and a fraction on the front of it saying what it says.

The Court: All right, the Court will consider it in evidence.

(Reporter's Note: Whereupon Plaintiff's Exhibit No. 11 was received in evidence.)

By Mr. Hambright:

Q. May I also make sure that the record reflects that Plaintiff's Exhibits 1 through 11 have all been received in evidence?

[116] The Court: Yes, sir, the Court has admitted them all.

Mr. Hambright: Thank you.

By Mr. Hambright:

Q. Mr. Knepper, the labor contract, the little, red booklet there, I don't believe I asked you where that was printed up?

A. It was printed in Beaumont, Texas.

Q. Mr. Knepper, about what year did your organization establish the headquarters in Beaumont, Texas?

A. In 1962.

Q. The function to which you testified this morning in regard to the engineering services, the housekeeping services, the budgeting, the personnel, were all of those vari-

ous services organized and brought here about ten years ago?

A. That's correct, yes, sir.

Q. All right, sir, now, Mr. Knepper, do you have a labor contract in existence with a Union called the Mobil Tankers Officers Association?

A. Yes, sir, I do.

Mr. Hambright: Mark this, please.

The Clerk: Plaintiff's Exhibit [117] No. 12.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit No. 12 for identification.)

By Mr. Hambright:

Q. This has been marked Plaintiff's Exhibit 12, and would you examine that and is that a true copy of the contract?

A. Yes, sir, this is.

Mr. Hambright: May we have that admitted in evidence, Your Honor?

The Court: All right.

(Reporter's Note: Whereupon Plaintiff's Exhibit No. 12 was received in evidence.)

By Mr. Hambright:

Q. Mr. Knepper, does this contract bear an effective date of January 1st, 1970?

A. It does.

Q. Does this contract on page 3 under the maintenance of membership provision, subparagraph (c), does it contain what is commonly referred to as an agency shop provision which is similar to the one in controversy in this lawsuit?

[118] A. Yes, sir, Paragraph 3(c) of this contract is substantially similar to 2(b) of the OCAW agreement.

Q. Would you look, did you say 3(c)?

A. 3(c), yes, sir.

Q. All right, thank you. Now did you as manager of this organization learn of the invalidity of the agency shop clause in this officers contract at about the same time you found out about the one on the seamen?

A. Yes, sir, the information we had applied to both.

Q. All right, sir, did you thereafter have an occasion to discuss this with the Union representing these officers?

A. Yes, sir, I discussed this with the advisors to this Union early in May of 1970.

Q. And what did you tell them—did you tell them that you were—you had discovered the invalidity of this clause?

A. Yes, sir, I did.

Q. What response did you receive?

A. Well, substantially they agreed that if it were illegal we ought not to enforce it.

[119] Q. Has that Union representing those officers ever taken any action toward enforcing the agency shop clause in that contract?

A. No, sir, they have not.

Q. Did you have an occasion to write them a letter in regard to the invalidity of that clause?

A. Yes, sir, I wrote them a letter on I believe the 7th of May, 1970, confirming our conversation on the subject.

Q. You never heard anything back from them by way of an attack on our position or a threat to the employees or any written documents whatever?

A. No, sir, nothing of that sort.

Mr. Hambright: Mark this, please.

The Clerk: Plaintiff's Exhibit 12.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit 12 for identification.)

By Mr. Hambright:

Q. Now, Mr. Knepper, do you have a contract, labor contract with the radio officers Union?

A. Yes, sir.

[120] Mr. Hambright: Mark this, please.

The Clerk: Plaintiff's Exhibit No. 13.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit No. 13 for identification.)

By Mr. Hambright:

Q. Would you look at this Plaintiffs Exhibit 13, Mr. Knepper, and tell us if that is a true copy of the Radio Officers contract?

A. Yes, sir, it is.

Q. And what is the beginning date of that labor contract?

A. This contract is dated March 1st, 1970. Actually it was signed in July of 1970, and retroactive to March 1st.

Q. Does that agency, was an agency shop clause in it or not?

A. No, sir, it does not have one.

Q. At the time that contract was negotiated you discovered the invalidity of the agency shop clause?

A. Yes, sir, I did. There was a strong demand for that clause but we didn't accede to it.

[121] Q. Did the Radio Officers perform this service aboard these vessels, the same vessels that you have described this morning?

A. Yes, sir, they do.

Q. Mr. Knepper, would you state whether or not some of your employees who are subject to the labor contract involved in this lawsuit, the seamen's contract, are physically present in the State of Texas one hundred percent of the time, some employees?

A. You are not saying as an individual here?

Q. I am not talking about John Doe, who may be here or somewhere else, but I am saying are there some individuals always in the State of Texas who are subject to this labor contract?

A. Yes, sir, definitely.

Q. If you took a calendar and laid it down on a table and it was marked off January, February and March, et cetera, would all of those months and dates be covered by employees physically present in the State of Texas, receiving money from your organization, either as wages or vacation or what-have you?

A. Yes, sir, there would always be somebody.

[122] Q. Would you name some of the typical or ordinary ports of call in the State of Texas where your tankers come into port other than Beaumont?

A. Well, Brownsville, Corpus Christi, Baytown, Texas City, Houston, and Beaumont, Port Arthur.

Q. Could it be that the same vessels might call at several of those ports on one occasion or one trip?

A. Yes, sir, that happens.

Q. Would you describe the general, ordinary pattern of the movement of your vessels, not being the one that might

temporarily be sent off to Guam or somewhere else or some foreign port, but the typical, ordinary pattern of one of your vessels?

A. Well, the typical pattern would be loading in Beaumont and discharging in a port on the Eastern seaboard, Paulsberry, New Jersey; New York City; New Haven; Providence, Rhode Island; Boston; Portsmouth.

Q. How about Florida and Alabama and some of those states?

A. We recently have had business starting in [123] Florida. Occasionally we might have a ship chartered that would go to Florida. We have ships loading in Alabama.

Q. Would there be an occasion for one of your vessels to be in a port in North Carolina or South—

A. Yes, sir, it is not frequently, but we have had ships call there.

Q. How about Mississippi?

A. I don't recall a voyage there. It is not impossible but I don't recall one.

Q. How about Virginia?

A. Yes, Virginia.

Q. Georgia?

A. Yes, we have had ships call there.

A. Delaware and Maryland?

A. Yes, sir, to both.

Q. Now in the normal course of events, bearing in mind the men work ninety days and are off thirty days on vacation, would they thereafter go and catch their ship or some other ship at some United States port ordinarily?

A. Yes.

Q. Does your office in Beaumont, Texas deter- [124] mine where he goes and which ship he will catch?

A. Yes, the determination is made in Beaumont. If he should be a man that designates Providence or New York as his shipping port he may have his orders transmitted to him through my branch office in New York, but the decision as to which ship he would go to is made in Beaumont.

Q. Suppose you told him to catch a ship in Beaumont or Corpus Christi, and his shipping port happened to be designated in Providence, Rhode Island. Would he or not receive special transportation allowance and so forth?

A. Yes, sir, he would travel from his home to the ship and he would receive transportation from the shipping port to the ship.

Q. Mr. Knepper, in the ordinary course of events would it be true that all of your 279 present employees subject to the labor contract involved in this lawsuit, would be expected to catch a ship in Beaumont or some other Texas port if they were with the company long enough to do so?

A. Yes, I think the probability is very high in the course of a man's career he would catch [125] a ship in Texas, in a Texas port.

Q. And some of them would catch it here perhaps more often than others?

A. True.

Q. Now, Mr. Knepper, once again, this agency shop clause and present labor contract with these defendants, what do you conceive to be the problem from an operating point of view with this clause in your labor contract and with the Union demanding the enforcement of that clause, as they have done in this case. What effect does that have on the company itself?

A. Well, I was advised by counsel that if we had this clause and if we enforced it we would be in violation of the

Texas Right-to-Work Law and being in violation could have some bad consequences for us, beyond bad citizenship that we could endanger our privilege of doing business in Texas, and we could also be subject to a suit by an individual employee or class suit on the basis that we infringed on their rights.

Mr. Hambright: I pass the witness.

The Court: Mr. Dixie?

[126] **CROSS EXAMINATION**

By Mr. Dixie:

Q. Mr. Knepper, is there any single man covered by this contract who spends one hundred percent of his working time in the State of Texas.

A. No, sir.

Q. You didn't intend to tell your lawyer that there was, did you?

A. No, sir, I did not.

Q. Is there any single Texas employee covered by this contract that does spend as much as fifty percent of his working time in the State of Texas?

A. No, sir, I believe not.

Q. So we have to go down to some percentage below fifty percent to find out where—how much of their time, working time your people spend in Texas, don't we?

Mr. Hambright: If it please the Court, I don't want to prolong the hearing, but the way the question was phrased it was stated in terms of your people and not an individual man.

[127] Mr. Dixie: I withdraw that question, Your Honor.

The Court: All right.

By Mr. Dixie:

Q. May I work from the blackboard?

The Court: Yes.

Q. If you will excuse my geography, I have undertaken to draw a little map of the United States, Mr. Knepper, thus far.

A. I think this was established—

Q. This is Beaumont, not very good, but we will work from this, if you follow what this is.

A. Yes.

Q. Now typically the work of your eight tankers consists in the transportation of petroleum products from the Beaumont refinery to some place on the East Coast, does it not?

A. That is true.

Q. When a vessel arrives in Beaumont how long does it take to load it?

A. Well, the time varies, I would say from eighteen to thirty hours, depending on the cargo and conditions.

Q. Do you testify that eighteen is the shortest?

[128] A. Well, I think we have done better, I was just trying to give you the middle.

Q. You testified that eighteen is the average?

A. I think the average is probably a little higher.

Q. You furnish logs to the Union, don't you, that tell exactly how many hours a vessel is in port and how many hours it is at sea, don't you?

A. We furnish logs to the Union?

Q. Yes, excerpts from the ships' logs.

A. No, I don't believe, no excerpts from the ships' logs, no.

Q. In port, let's say eighteen to thirty hours at Beaumont. Now then, when a vessel arrives from the high seas does it take on a Pilot?

A. It does usually.

Q. About how far from the actual Port of Beaumont does it take on a Pilot?

A. I would say forty-five miles.

Q. All right, and then does it have a Pilot going out forty-five miles?

A. Yes, sir.

Q. About how many hours is the ship with Pilot?

[129] A. Oh, let's say six hours probably.

Q. Each way?

A. Yes, sir.

Q. All right, with Pilot then it will be twelve hours?

A. Yes, sir.

Q. Going and coming, would it not?

A. Yes, sir.

Q. Now then, let's see, which is the predominant port on the East Coast, would you say the New Jersey-New York area gets most of your products?

A. Well, I would say the middle range is probably, I would say probably Providence.

Q. Providence is about typical?

A. Yes.

Q. About how long does it take the vessel to go from the Port of Beaumont to Providence?

A. About four and a half or five days, seaboard to seaboard.

Q. Four and a half to five days?

A. Yes.

Q. Now then, when the ship gets to Providence does she take on a Pilot?

[130] A. Yes, sir.

Q. How long does that Pilot take, do you happen to know?

A. I would say about three and a half hours.

Q. To go and come would be seven?

A. Yes.

Q. All right, with Pilot at Providence seven hours and then in port to unload would be about how much?

A. Well, again it varies, I would say eighteen to thirty hours again. Again it is a range depending on cargo and the conditions.

Q. Is it true that one of these vessels that is on a fairly steady run will make that round trip twice in about a month?

A. Approximately, yes, sir.

Q. Twice in a month?

A. Uh-huh.

Q. So then can we tell the Court that the period of time of any employee on that supposed run will be two times this once a month, that will be something we can take as normal, wouldn't it?

A. Yes, sir, I believe.

[131] Q. Okay, so the rest of the time the men are outside the State of Texas, aren't they?

A. Yes.

Q. Now let's see if they come even that often. Where is the MOBIL LUBE at this time?

A. Enroute to Guam.

Q. Enroute to Guam. Is she under charter to the United States Government?

A. She is.

Q. Is it true that she hasn't been in Texas during the last fifty days?

A. I would say roughly, I am not sure.

Q. She hasn't been here at all?

A. No.

Q. How long is she going to stay out in the future?

A. It is questionable, she is on a six-months charter.

Q. A six-months charter?

A. Yes, sir.

Q. It may be longer?

A. No, I mean she could return before the charter expires.

Q. But as far as we know it is a six-months [132] charter?

A. We don't know where she will go.

Q. Those employees who are covered by this labor contract—

A. Pardon?

Q. I say are the members of that crew employees who are covered by this labor contract?

A. Yes, sir, unlicensed members of the crew, yes, sir.

Q. Now then, where is the MOBIL POWER today?

A. She is also offshore.

Q. Where?

A. I haven't referred to the log, I am not exactly sure where she is at.

Q. Well, I was wondering if she is enroute from Boston to Puerto Rico?

A. I believe that's probably the case. It is my feeling she is headed for the Caribbean.

Q. You don't know as supervisor of that ship?

A. I haven't seen the log this morning.

Q. What does she pick up in Puerto Rico?

A. I imagine she loads products.

Q. Products?

A. Refined products.

[133] Q. What products?

A. I imagine jets and gasoline.

Q. Well, aren't you the man that sends that ship over there to pick up whatever it is going to pick up?

A. I am the man that operates the ship, yes, sir.

Q. Well, you mean to say that your supervision over that MOBIL POWER doesn't even cause you to know why the MOBIL POWER is going to Puerto Rico?

A. I have subordinates that do watch these details. I don't follow each cargo.

Q. Do you know generally what type of cargo you pick up in Puerto Rico when you make that run?

A. Yes, sir, as I told you, it is refined products.

Q. What is that?

A. Refined petroleum products.

Q. Refined petroleum products?

A. Yes, sir.

Q. Where are those refined petroleum products taken?

[134] A. Usually to the East Coast.

Q. Usually to the East Coast. Generally speaking, how long does—how often does that trip to Puerto Rico take place?

A. How frequently?

Q. Yes.

A. At no regular intervals.

Q. Well, give us your best estimate of how long that takes place.

A. I would guess that last year we may have had eight such voyages.

Q. Eight trips?

A. Yes.

Q. Eight trips to Puerto Rico?

A. Yes, sir.

Q. Now do your ships go foreign?

A. Yes, sir, we were just talking about that.

Q. Other than the ones we have been talking about?

A. Well, any of them could.

Q. Well—

A. You mean are any others on charter now, no, sir.

Q. What has been the practice in say the year [135] 1971? How many ships made trips to foreign ports?

A. I believe three.

Q. What?

A. I believe three.

Q. Give us the name of the first one.

A. I am sorry, without reference to my log I couldn't tell you.

Q. Where did those three ships go?

A. To Puerto Rico. We also had some military charters.

Q. Out to the Pacific?

A. I believe these were to the West Coast.

Q. To the West Coast?

A. Yes, sir.

Q. Would that be to the California ports?

A. Yes, sir.

Q. All right, and then from the West Coast where?

A. Back to the Gulf.

Q. Back to the Gulf?

A. Uh-huh. Excuse me, we also had a voyage to Hawaii.

Q. A voyage to Hawaii?

[136] A. Yes, sir.

Q. Now can't you give us your best estimate as to how much time was spent by those three vessels in traveling foreign, that is, from some port in the United States to some port in a foreign country?

A. I haven't tabulated it.

Q. Well, can you give us your best estimate?

A. Just off the top of my head I would say maybe fifteen percent of voyage time was in foreign voyages.

Q. Does the ECLIPSE, the SS ECLIPSE sometimes go to Brownsville to pick up products for Providence, Rhode Island?

A. Yes, sir.

Q. This is a petroleum product, a component of asphalt?

A. Yes, that's correct.

Q. What is the source of that raw product, is it Mexico?

A. Yes, it is Mexico.

Q. How often does the ECLIPSE go to Brownsville to pick up this Mexican raw product to deliver up to Providence?

[137] A. Well, frequently, I would say at least once a month probably there is a cargo like that.

Q. At least once a month. What is the duration of the trip that the ECLIPSE makes from Brownsville to Providence?

A. Well, that is a longer run, I would say that that probably is around an eighteen-day round trip at least.

Q. Okay, now so far we have a situation where your typical run has a man in Beaumont, Texas twice a month from eighteen to thirty hours each time. but if we are going to go to the average that employee works we have to deduct the LUBE which is on charter, we have to deduct the MOBIL POWER and we have to alter our figures for the ECLIPSE, don't we?

A. Yes, you want to make that sort of calculation you do.

Q. Now let's see, how do you pay these employees, do you pay them in cash at the end of the trip?

A. Generally they are paid in cash for the period of time they are on the ship. Paid in cash by the Master.

Q. Do you pay them in cash because they are [138] subjectt o the Maritime Law and that is what is required for seamen or the seamen demand it?

A. Yes, sir, if the seaman demands cash he must have cash.

Q. Do you usually pay those men off in a northern port?

A. Generally, yes, sir.

Q. That would be up in New York or Providence somewhere?

A. Yes, sir.

Q. And do you usually pay them every other trip?

A. That is the general practice, yes, sir.

Q. In cash?

A. Yes, with one exception to that, if the employee would like to have a check sent to his bank or dependents, he can request that and the check will be sent to the extent that he receives the money by check, he doesn't receive it in cash.

Q. So then on your plaintiff's Exhibit 3, which you identified under cash supplied, $1,994,000.00 let's call that two million dollars, just for round figures, that's close to two million dollars. That two million dollars [139] that you pay in cash in a northern port, you list it here as money paid in Texas, right?

A. No, sir.

Mr. Hambright: If it please the Court, that is not listed as money paid in Texas, it was developed on chief examination that the money was picked up from the First Security Bank in Beaumont, in armored cars and taken and given to the Master aboard ship and so identified on direct testimony.

The Court: All right, you may make your objection, but it isn't necessary for you to explain your objection. You object to the question that he asked the witness?

Mr. Hambright: Yes, sir, because the question assumes what I interpret to be erroneous.

The Court: The objection is overruled. This is cross examination.

By Mr. Dixie:

Q. In any event—I will rephrase it will be [140] better for you.

Notwithstanding this Plaintiff's Exhibit 3, this particular two million dollars in wages that we are talking about that is paid to the men in cash in Northern ports while they are working, correct?

A. Substantially true, yes, sir.

Q. Also Plaintiff's Exhibit 3, as you told us, includes the salaries of licensed personnel and the Masters, is that correct?

A. That's correct, yes, sir.

Q. We don't know just what part of this exhibit really concerns wages paid to the employees involved in this lawsuit, do we?

A. That's correct.

Q. Now I want to ask you about Plaintiff's Exhibit No. 2. There are designated shipping ports that you have here. When a man goes to work for you, you require him to designate Beaumont, New York, or Providence, a shipping port, is that right?

A. Yes, sir, that is true.

Q. And that means he can designate any port he wants to, regardless of where he lives?

[141] A. That's correct.

Q. And the purpose of that designation is to give him his travel allowance, isn't it?

A. That's correct.

Q. Now do you have some of your employees that live in the State of California?

A. Yes, sir, we do.

Q. All right, now let us suppose that an employee who resides in California but works for Mobil has designated Beaumont as his designated shipping port and let us suppose he got off of the vessel at Tallahassee, Florida and he is going home, he goes home to California?

A. Uh-huh.

Q. Do you follow me so far?

A. Yes, sir.

Q. Then under this designated shipping port Mobil Oil will pay him transportation from Tallahassee, Florida to Beaumont, but not the rest of the way to California?

A. That is correct, yes, sir.

Q. Now if the man thinks he man make more money by designating Portsmouth or New York, he can do that, can't he?

[142] A. Yes, sir.

Q. Even though he is going to California?

A. Yes, sir, that is true.

Q. So that shipping port doesn't tell us much about the man's center of activities, does it? That just tells us where he got the—

The Court: Just a minute.

Mr. Hambright: He isn't giving the witness time to answer. The witness embarks on an answer and he starts on a new question.

The Court: I don't think counsel intends to interrupt him. We will sustain the objection, however, and let you start over.

By Mr. Dixie:

Q. Now as far as the residence of these men is concerned, what you have given us is the designation of residence that they make on your records, have you not?

A. Yes, sir.

Q. You know some of the boys like to designate Texas as a residence so they don't have to pay New York income tax, have you ever heard that?

[143] A. It is a possibility, yes, sir.

Q. Who is your immediate superior?

A. Arthur E. Fisher.

Q. What is Mr. Fisher's title?

A. He is manager, U. S. operations.

Q. Of what department?

A. Marine Transportation Department?

Q. You are answerable to him for your conduct of these eight tankers?

A. Yes, sir, I am.

Q. This suit has been filed under the name of Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations, you have already told us that you are the head man in the Gulf-East Coast Operations?

A. That's correct.

Q. And you are subject to Mr. Arthur E. Fisher, he is the head of the Marine Transportation Department, is that correct?

A. No, sir.

Q. What is he?

A. He is head of U. S. Operations.

Q. All right, who is Mr. Fisher's superior?

A. Henry J. Luck.

[144] Q. L-u-c-k?

A. Yes, sir.

Q. What is his position?

A. He is General Manager of Marine Transportation Department.

Q. Is Mr. Arthur Fisher a part of the Marine Transportation Department?

A. Yes, sir.

Q. All right, so I gather that Gulf-East Coast Operations is subject to the Marine Transportation Department, is that correct?

A. Yes, sir, part of it.

Q. And then in turn the Marine Transportation Department is subject to the corporate officers?

A. Yes, sir.

Q. Now in this suit you filed your complaint and you allege that Mobil Oil Corporation is a New York corporation. Are you familiar with that?

A. Am I familiar that it is a New York corporation?

Q. Yes.

A. Yes, sir, I know it to be a New York corporation.

[145] Q. And then are the principal corporate officers headquarters in New York State?

A. Yes, sir, they are.

Q. And then are the principal officers of the Marine Transportation Department headquartered in New York State?

A. The Marine Transportation Department?

Q. Yes.

A. Yes, sir.

Q. They are. All right, now you have told us—let's back up a minute. I believe you said that when you executed this contract, first on October 30, 1969, the execution was preceded by a strike, is that correct?

A. I don't recall saying that, but there was a strike.

Q. It was a six-month strike, was it not?

A. No, sir.

Q. How long was the strike?

A. I believe seventy days.

Q. Seventy days?

A. Yes, sir.

Q. And then preceding that seventy days did you negotiate for sixty days as required by the [146] Taft-Hartley Act?

A. Yes, sir, I am sure we did.

Q. And did you negotiate from time to time during the strike?

A. Yes, sir.

Q. How many negotiating sessions did you have?

A. I haven't the records, I would think thirty or forty, probably, you mean individual days?

Q. Thirty or forty days?

A. Yes, sir.

Q. Was each and every one of those negotiating sessions conducted in New York City?

A. Yes, sir.

Q. Was any negotiations conducted in Texas?

A. No, sir.

Q. Why, if the head operation is down here in Texas, did you spend all of that time in New York, Mr. Knepper?

A. That has been our pattern of relationship with this Union, primarily for the Union's convenience.

Q. Going back to 1942, hasn't it?

A. Yes, sir.

Q. All right, and then, of course, you have [147] access to your corporate officers up there to advise with them when decisions are necessary, don't you?

A. We do have access to them, yes.

Q. So that is the reason you negotiate in New York.

A. No, sir, it isn't.

Q. What is the reason?

A. Primarily for the convenience of the Union.

Q. Merely for the convenience of the Union you negotiate in New York?

A. Yes, sir.

Q. Well, is the Union centered in New York?

A. Yes, sir.

Q. Why do you say that?

A. Because they tell me that their main office is at Beekman Street in New York.

Q. Their main office in New York?

A. Also the designation of their Local indicates that they are an East Coast Local and not a Gulf Local.

Q. I wonder if you are familiar with the fact that this Union is certified to the Mobil Oil Corporation?

[148] A. Yes, sir, I am familiar with that.

Q. Not to the Gulf-East Coast Operations but to the Mobil Oil Corporation. You know that, don't you?

A. I know the wording of that, yes, sir.

Q. And you know that this Union is certified by the New York office of the National Labor Relations Board, don't you?

A. Yes, sir, I know that.

Q. That's where the original elections were conducted, were they not?

A. The original elections?

Q. Yes.

A. I doubt if they were conducted in New York.

Q. Well, I mean that the office that supervised the election.

A. I believe that's probably true.

Mr. Dixie: I offer in evidence Defendant's Exhibit 1, which is the official certification.

The Clerk: Defendant's Exhibit No. 1.

Mr. Dixie: I have exhibited that to counsel and we will offer that, [149] Your Honor.

The Court: All right, it will be accepted.

(Reporter's Note: Whereupon it was marked Defendant's Exhibit No. 1 for identification and received in evidence.)

By Mr. Dixie:

Q. We have already put in evidence the memorandum of understanding which you signed on October 30, 1969, at New York City.

A. Uh-huh.

Q. You remember that document?

A. Yes, sir.

Q. And you gentlemen up there made the contract effective two days later, on November 1st, did you not?

A. Yes, sir, uh-huh.

Q. Correct?

A. Yes.

Q. That is provided the Union ratified it in the meantime?

A. Yes, sir.

Q. And you started paying the wages on November [150] the 1st, 1969, did you not?

A. That is correct, yes, sir.

Q. When you came to sign this contract of November the 8th, 1969, you were already paying the increased wages, were you not?

A. That is true, yes, sir.

Q. Isn't that then a situation that the signing that you made in Beaumont was a formality to put everything in tidy order and your contract was effective upon ratification following October 30th, isn't that the situation?

Mr. Hambright: We object, if it please the Court. I think he stated two questions in one. He said do you do it, do you put it in the form of tidiness——

The Court: I believe this witness might be able to.

Mr. Dixie: Well, let's get it this way.

Q. Since your contract, since the contract was signed in New York, ratified and put in effect on November 1, 1969, does that mean that you considered you had a binding contract with the Union [151] as of that date and time?

A. Yes, sir, I thought we had a binding meeting of the minds.

Q. And the formal signing that took place on November the 18th, that was just to put everything in ship-shape order as a signed document, wasn't it?

A. More than just ship-shape order, I didn't feel comfortable until I had the agreement, meeting of the minds reduced to writing until I had that document sgined.

Q. Oh, Mr. Knepper, I have a copy of this other document. You recognize this as your memorandum of understanding executed on October the 30th?

A. Yes, sir, this is basically the substance of the agreement, yes, sir.

Q. I believe you told us when Mr. Perrio came in to sign it in November, his business was to proof-read the contract, is that right?

A. Yes, sir.

Q. That was to make sure that the final document said exactly what you signed in New York, correct?

A. Yes, sir.

Q. Now I will take the liberty to call the Court's attention to the fact that there is a decision [152] that I am fa-

miliar with because it cost my clients $20,000.00 to think otherwise. CCI Corporation vs. Steel Workers Union, by the Tenth Circuit that says that the contract is effective in the labor situation upon ratification by the Union and the Union was not free to engage in striking after that, which they did to their sorrow.

[153] I will give the Court that citation before we terminate the trial.

Mr. Hambright: May it please the Court, on this point of ratification—

The Court: I think this evidence is offered, I presume for the purpose of showing that the contract is duly consummated somewhere other than Beaumont, is that the purpose?

Mr. Dixie: Yes, sir.

The Court: All right.

By Mr. Dixie:

Q. Mr. Knepper, you had a habit of having periodic meetings with the Union to discuss your mutual business, did you not?

A. Yes, sir, for a period of time we did that, yes.

Q. Were those quarterly meetings?

A. Yes, sir, roughly on the quarterly schedule.

Q. All right, four times a year?

A. Yes, sir.

Q. How many years have those meetings been going on?

A. I don't really know, I think my predecessor [154] conducted such meetings and we conducted them during the first two years of this current contract and then we discontinued them.

Q. All right, where did those meetings take place?

A. New York.

Q. All of them?

A. Yes, sir.

Q. All of them in New York?

A. Yes. Again, for convenience of the Union.

Q. How many arbitration cases have you had?

A. I believe there have been six while I have been managing it.

Q. While you have been manager?

A. Yes.

Q. Have they all been conducted in New York?

A. Yes, sir.

Q. Have you checked arbitration cases before the six you had?

A. Yes, sir, I have a listing up to nine from 1966. Before that I don't know.

Q. Were they all conducted in New York City?

A. Yes, sir.

Q. Why?

[155] A. Because our agreement calls for them to be done under the auspices of the Triple A, and we had a pattern in the past of using Triple A, and that's why we continued.

Q. You are surely not telling the Court that the Triple A causes you to arbitrate in New York?

A. No, I am just saying that is the pattern we established and that's why we go to the Triple A office.

Q. I want to show you a letter dated July 19, 1971, to

the American Arbitration Association and ask you whether or not you sent such a letter?

A. Yes, sir, I did.

Q. Since it is only three lines long, would you please read it to the Court?

A. Yes, sir. This says: "Gentlemen, in response to your letter of July 16, 1971, we designate New York City as our choice of locale for the arbitration hearings and appointment of Mr. W. M. Gage as company arbitrator."

Q. Have you sent that type of letter each time that you had an arbitration to hear?

A. I don't believe every time, no, sir.

Q. I notice you say that it is the company's [156] choice of locale to arbitrate in New York. Is there some reason why you say that in your letter?

A. I suppose it is convenient for us to use.

Q. Is it true?

A. Yes, we chose, we weren't dragged there.

Q. Speaking of the convenience of the Union, when you had your quarterly meetings in New York did you pay transportation of Union officers to go up there?

A. Yes, sir, we did.

Q. Did you pay them lost time while they were in New York?

A. Lost time?

Q. Yes, from their work.

A. We paid their wages, yes, sir.

Q. You paid their wages?

A. Yes, sir.

Q. So the company transported the Union Committee to New York and paid their wages?

A. Yes, sir.

Q. And you say you do that for the convenience of the Union?

A. Yes, sir.

Q. Now let's talk about your grievance procedure. The contract contains a grievance and arbitration [157] procedure, does it not?

A. Yes, sir.

Q. Does it provide for a first step?

A. Yes, sir.

Q. Does it provide that the complaint of the man will be presented to his immediate superior?

A. It does, yes, sir.

Q. That would be either the Boatswain or the First Assistant Engineer or the Steward, is that correct?

A. That's correct, yes, sir.

Q. This is all done aboard ship?

A. All people are aboard ship.

Q. On high seas?

A. Or in port.

Q. Does it have a second step?

A. Yes, sir.

Q. And then what does the second step consist of?

A. Well, then the second step is, failing at the first step, the dispute is then referred to the department head.

Q. Is that aboard ship?

A. Yes, sir.

[158] Q. So the second step would take it up one step either to the Chief Mate or Chief Engineer, correct?

A. That's correct.

Q. Where does the third step go?

A. The third step goes to the Master of the vessel.

Q. All right, to the Master of the vessel?

A. Yes, sir.

Q. And that would be on the high seas if that's where they happen to be?

A. Yes, sir.

Q. Where does the fourth step go?

A. The fourth step is the Marine Superintendent or the Superintendent of Marine Maintenance and Engineering.

Q. The Marine Superintendent where?

A. In Beaumont, Texas.

Q. All right, now does that mean you only have one Marine Superintendent?

A. That's correct, yes, sir.

Q. How is the matter presented to him?

A. Usually verbally.

Q. Verbally?

[159] A. Yes.

Q. By whom?

A. Usually by some Union officer that is ashore.

Q. Then the fifth step consists of writing a letter, is that correct?

A. Well, in the practice it consists of presenting me with a form, a grievance form with details of what has happened on all of the procedures.

Q. The fifth step consists of them giving you a form properly filled out, showing what the grievance is about?

A. Yes, presenting the grievance to me with a written form, yes, sir.

Q. Now the contract doesn't provide for any meeting in Beaumont after the formal grievance is presented, does it?

A. No, that is the fifth step.

Q. Then the next thing that happens is you go to New York to arbitrate?

A. Or we settle the grievance.

Q. Now you told us, you told the Court that you had as many as twenty hearings conducted on [160] grievances in Beaumont, Texas, and did I understand you right about that?

A. I think what I said is that we had, I estimated that we may have had twenty written grievances at the fifth level in Beaumont.

Q. Well—

A. Some of which were presented personally by the Union officer that is located in Beaumont, and some come by mail to us from the New York office.

Q. Some in person and some by mail. When you said twenty hearings you were including the receipt of mail, is that correct?

A. I don't believe I said twenty meetings, hearings.

Q. Didn't you say twenty?

A. I think I said probably twenty grievances at the fifth level.

Q. I am glad to be straightened out, but I understood you to say that you had twenty hearings and only four of them went to arbitration, from which I assumed that you got sixteen settlements in Beaumont after a hearing and only four of them had to be tried. Is that not correct?

[161] A. Yes, sir, that is basically right.

Q. Well, if you had twenty hearings you ought to be able to give us the number of the grievances where you had such hearings, can you?

A. No, sir, I can't without going to my files and digging them out.

Q. Did you keep minutes of those hearings?

A. We kept memos and usually give a written reply to the grievance.

Q. Do you keep minutes of hearings of the kind you are talking about?

A. Well, I don't know what you are talking about or what you mean by hearings. We don't have a formal hearing procedure.

Q. Well, isn't it a fact, Mr. Knepper, that there are no formal hearings conducted in Beaumont under this grievance procedure at all, isn't that a fact, no formal hearings?

A. Well, I am at a loss as to what you mean by formal hearings. I meet with Mr. Perrio or whoever is in Beaumont, we sit down in my office and we discuss grievances. If this is an informal hearing perhaps.

Q. Are you testifying that you had twenty meet-[162] ings with Mr. Perrio to settle formal grievances?

A. Yes, sir, I would say approximately that, yes.

Q. What is that?

A. I say approximately that number, I can't say specifically.

Q. Do you have minutes of those you can show us?

A. We would have some, we wouldn't have complete minutes, we would have notes and memoranda data and so forth.

Q. I would like to ask you to produce those between now and tomorrow, if we are still going tomorrow, because I would like to see what they are, if you please, Mr. Knepper.

A. Yes.

Q. Now, if I understand your testimony right, about your arguments with the Union, you wrote them a letter in the spring of 1970, in which you told them that the clause was illegal and you told them how you were going to do things after that and you did do them that way after that, is that correct?

A. That is true, yes, sir.

Q. The Union never filed a grievance about that [163] with you, did they?

A. No, sir.

Q. Or bring any suit against you?

A. No, sir.

Q. Or make any written reply?

A. No, sir.

Q. Is that right?

A. No, sir.

Q. Then about a year and a half later the Union sent a letter to its membership, correct?

A. That is correct, yes, sir.

Q. How did you get the letter?

A. I don't recall. Those letters often turn up on my desk.

Q. Well, is it customary for the company to snoop around to find out what the Union is writing to its members about?

A. If we see a Union paper we always pick it up and read it. It is not a confidential document.

Q. So you got the letter by going and finding it and picking it up?

A. Yes, sir.

Q. The Union wasn't talking to you at all, the [164] Union was talking to its members, wasn't it?

A. Yes, sir.

Q. Its members had already joined the Union, hadn't it?

A. I don't know if they were members.

Q. If they were members they already belonged to the Union, is that right?

A. Well—

Mr. Hambright: We object to that question, the witness has testified he doesn't know who is a member and who isn't a member in all cases.

The Court: I think it is pretty argumentative, Mr. Dixie.

By Mr. Dixie:

Q. All right. Anyway, you picked up the Union letter and that's what brought on this lawsuit?

A. Yes, sir.

Q. In your discussions with the Union did you take the position that this clause was illegal in its entirety applied to any covered employee?

A. Yes, sir.

Q. In other words, you told the Union that you [165] were advised by counsel that this agency shop clause is illegal as to any employee, even if that employee signed on in New York, and even if that employee never came to Texas, it was still illegal as to all of them.

Mr. Hambright: We object, Your Honor, on the grounds that proof shows that there is no employee in that hypothetical status, that they all come to Texas, and some of them more than others.

The Court: I think the question is probably improper. The objection will be sustained.

By Mr. Dixie:

Q. I just want to establish the point that it was your position that the thing is illegal as applied to everybody of new employees, is that correct?

A. Yes, sir.

Q. Your position was it was illegal as applied to a resident of New York State?

A. Yes, sir.

Q. Is that correct?

[166] A. Yes, sir.

Q. All right, you never did get down to any discussion with the Union as to whether or not it was illegal as to some employees and illegal as to other employees, did you?

A. No, sir.

Q. That wasn't a part of your argument at all, right?

A. Yes.

The Court: This is duplicity, he has already answered the question once. I think we can shorten it a little bit, Mr. Dixie.

Mr. Dixie: All right, Your Honor. I am almost through, Your Honor.

The Court: Just as a matter of inquiry, however, is the issue for the Court to decide whether or not the contract may be invalid as to some employees, all employees or any employees, or if it was, if it is invalid to any employees would it be—would it be an enforceable provision of the contract? I am asking you, Mr. [167] Dixie?

Mr. Dixie: Well, Your Honor.

The Court: In other words, you are asking him the question if it is applied to residents of New York, but if it applies to anyone, which would be a resident of Texas, of course, but if it is invalid as to anyone is it an enforceable provision?

Mr. Dixie: Well, I think it is to the extent that it is valid and we have some Labor Board decisions in the summary judgment papers where the Labor Board, twenty-five years ago in a trucking situation said that it is legal as to these people but not legal as to these people. But the main point I want to say to the Court is that these parties have had no case or controversy touching the question of whether or not it is legal as to any specific employee and thereby to get the Court in a position where you are to render an advisory opinion about [168] some imaginary person that hasn't come up yet and when we get in to that we run right square into the teeth of what the courts are not supposed to do.

The Court: I am not too sure about that. I mean I may—I am not too sure as to what the Court is supposed to do. That I am pretty sure about, but it seems to me that the issue rather than whether this is a Texas contract or whether it is a New York contract or some other contract from some other state, it is applicable to residents of Texas and do we not have to apply the Texas law. That is the point that sticks out in my mind. Now I don't think the Court has to decide or I hope the Court does not have to

decide whether this is a Texas contract or whether it is a New York contract or whether it is a contract of some other state. But, wherever the contract is consummated [169] or finalized, if it is applicable to residents in Texas, is it not the responsibility of the Court to interpret the Texas law?

Mr. Dixie: Well, the Court will have to cross several bridges to come to that result but—

The Court: I just wanted your reaction to that and we will cross those bridges as we get to them.

Mr. Dixie: But the point about that is this controversy has never isolated the question that you are now isolating. This complaint and these distinguished lawyers say that it is invalid in its entirety as applied to anybody. That's all that they have ever said.

The Court: That's because it is a Texas contract?

Mr. Dixie: I don't know why they think it.

The Court: Well, we will have to find out. We will have to find out, [171] but I don't know. We will proceed on and maybe it will unravel as we get further into the trial.

Mr. Dixie: Very well. I am almost through with this witness, if the Court will indulge me just a minute.

The Court: All right.

By Mr. Dixie:

Q. Do these tankers each have a home port?

A. Yes, sir.

Q. Are they registered under the requirements of the Maritime Statute of the United States?

A. Yes, sir, they are.

Q. In what ports are these vessels registered?

A. Some in Wilmington, Delaware, and some in New York City.

Q. Are any of them registered in the State of Texas?

A. Not to my knowledge, no.

Q. Does Mobil Oil Corporation operate vessels other than the ones that are under your jurisdiction?

A. Yes, sir.

Q. And where are they, where do they operate?

[172] A. Well, Mobil has a West Coast fleet, they have inland fleets of tugs and barges and small coastal tankers, they have an extensive foreign flag fleet.

Q. All right, now are all of those under the jurisdiction of the so-called Marine Transportation Department?

A. Yes, sir.

Mr. Dixie: I pass the witness.

The Court: Anything further, Mr. Hambright?

Mr. Hambright: Yes, sir, I have some more questions.

REDIRECT EXAMINATION

By Mr. Hambright:

Q. Mr. Knepper, let's go back to New York on the memorandum signing day, when you wrote out those two sheets of handwriting, I believe this is October 30, 1969, is that correct?

A. Yes, sir.

Q. I believe you have identified the second paragraph in there as stating that the labor agreement would become effective upon ratification [173] by the Union membership, is this correct?

A. Yes, sir.

Q. Now at the time you signed that handwritten memorandum there had been no such ratification, had there?

A. No, not at that time, no, sir.

Q. Now you told Mr. Dixie that you had a meeting of the minds as to the contents of these work sheets, is that correct?

A. Yes, sir.

Q. Do you know as a man in your position, as manager of this corporation, of this organization, that very often labor contracts are agreed upon by the negotiators and then not ratified by the membership?

A. Yes, sir, that happens.

Q. And you have heard of that happening?

A. Yes, sir.

Q. And do you know as a fact that when that happens it goes back to the bargaining table?

A. That's correct, yes.

Q. And the clauses and provisions might receive considerable changes and adjustments, is that correct?

[174] A. I would think that would happen, yes, sir.

Q. This labor contract we are talking about has a lot more in there beyond just the agency shop clause, does it not?

A. Yes, sir.

Q. Do you count or do you know that it might have going over one hundred paragraphs and provisions?

A. Yes, sir.

Q. And had there been a non-ratification can you state as a fact that it would have been necessary to take up the pieces and negotiate some more?

A. Yes, sir, that is true.

The Court: Where would you have to go to do the negotiating? I think that is important.

Mr. Hambright: Could you have negotiated any last-minute changes in your office in Beaumont, as well as in New York?

A. Yes, sir.

Q. Did you testify that you are now asking the Union to meet you here in Beaumont?

A. Yes, sir.

[175] Mr. Hambright: Would the Court give us just one or two minutes, maybe we will be able to—

The Court: Yes, I probably will give you until 9:30 in the morning.

Is it the plaintiff's contention that this is a Texas contract? Is their cause of action predicated upon this being a Texas contract?

Mr. Dixie: Would the Court give me thirty seconds on that?

The Court: I think you can think about that in the morning and I would like to hear a little argument from both of you in the morning about this. It looks to me like this is the real meat in the lawsuit, the real basis for the lawsuit. If you contend that this is a Texas Contract, then I think your facts are a little light. If it isn't necessary, then we might be able to proceed further, but you can tell me, give me the answer to that question in the morning.

]176[Mr. Hambright: Well, excuse me, Your Honor.

The Court: That's all I have to say.

Mr. Hambright: I was just going to get the copy of the Taft-Hartley Section 14b, that I referred to this morning, it is our contention that if this contract was executed in Texas, then clearly it is in violation of the agency shop clause category.

The Court: I think that would be probably correct.

Mr. Hambright: Which would be one hundred percent as to all these employees. On the other hand, if it is not executed in Texas, but is applied in Texas, then under the Taft-Hartley Act, Section 14b, likewise, it is void as to all employees if it receives application in the State of Texas, so that the need only be executed or applied.

The Court: The exclusive applica- [177] tion in Texas?

Mr. Hambright: No, sir, I do not think it has to be exclusive, but we come back to the time sequence. It is always receiving application in Texas, every day of the calendar, according to this witness. In view of the close ties to Texas, and actually the company, the organization appearing as the contracting party, the employer in that labor contract, is headquartered here in Beaumont, Texas. I don't think there is any doubt of that and there may be ships coming in and going but in a way it would be similar to an Amarillo company that had some shoe salesmen that went to Oklahoma a great bit of their time, still it is a Texas employer and the company is here all the time, the money is being handled here, the payroll records are here, the unemployment insurance is here, and there is someone always in Texas subscribing to the contract, such as [178] these various vacationing people or people on ships or on standby or this sort of thing. So we are saying that if our proof does not satisfy the Court that the contract was executed in Texas, in view of this double ceremony of whatever they to call it, notice after ratification, still it was and is applied in Texas every day and receiving application here right along.

The Court: Application might save you. In all sincerity, I don't believe the Court could find that the contract is consummated in Texas. I think the contract was reached in New York. It may be finalized here, but again, according to the decision Mr. Dixie quoted there, that is more of a procedural aspect rather than substance.

Now if the application of it will bring into force the Texas law, then you may have some basis for your [179] lawsuit, but I think I would have to find that the contract was a New York contract. Of course, as a matter of information, I don't—is the situation such that those who negotiated this contract for the plaintiff did not know that it was in violation of the Right-to-Work Law in Texas?

Mr. Hambright: Yes, sir, that is correct.

The Court: They did not know?

Mr. Hambright: Yes, sir, the notification sent by Mr. Knepper to the other Union with the other contracts, I have seen that letter and it states that the company was acting in ignorance of the Texas law.

The Court: And I suppose it doesn't violate the New York law?

Mr. Hambright: Yes, sir, that is correct, and there, of course, are other states involved, some with Right-to-Work laws, most of the southern states with them and most of the northern [180] states without them.

The Court: Then we would get down to the question of whether or not the application in Texas would bring into effect the Texas law.

Mr. Hambright: Yes, sir, that's what we contend to be the constant, everyday application in the State of Texas, it is a Texas employer, the same as Mobil Refinery out here. We can show the Court, the Court will take judicial notice, I think, that after fifty years of the operation of this refinery that it too is owned by Mobil Oil Corporation in New York City, but it nevertheless has labor contracts with OCAW Locals that are signed much like Mr. Knepper's contract. It will say "Beaumont Refinery" above the Mobil Oil Corporation.

The Court: With headquarters in New York?

Mr. Hambright: The corporate headquarters are in New York, Your [181] Honor, but the operating divisions run the refinery and I think the analogy is very apt is very apt because no one would question that the Beaumont Refinery is not a Texas employer for the purposes of these provisions, having been before Your Honor as plaintiff and defendant in many lawsuits down here in Beaumont. The Mobil Refinery out there. So, we think—

The Court: It wasn't an employer to the extent of negotiating a contract in Beaumont, they had to go to New York to negotiate the contract?

Mr. Hambright: In this particular case prior to 1962 the operations that are now in Texas were conducted elsewhere and they developed this pattern and they—they have, labor relations change a little slower than the day-to-day logistic change, I am afraid, and so they have authority to negotiate but they have moved their business here and it was done. And I want the Court [182] to understand ten years ago, long before anyone knew that this controversy would arise and the East Coast operations were brought here in '62, and this all began as a Texas employer at that time. And this was done without any intention of motive one way or the other in respect to the Texas Right-to-Work Law.

The Court: But it is obvious that the parties at the time they negotiated this contract, that they didn't intend to be affected by Texas law.

Mr. Dixie: Your Honor, we have the section 11, I believe it is in there, which acknowledges that the contract may be invalid and it says in effect that if it should be held to be in part invalid the other one hundred percent section would go ahead.

The Court: I understand that, but this would be a matter that would be so obvious to a Texas lawyer, that [183] would know anything about labor relations, labor law.

Mr. Hambright: Judge, I have to tell the Court to my knowledge no Texas lawyers participated in that.

The Court: But if they intended for such law to apply, they would have to fix a law to apply—

Mr. Hambright: I think they were subject to the lawyer and this law department, it determined that upon being presented with this finished product but I think—

The Court: Well, we will get down to this proposition. The Court in all fairness, I can't conclude that this is anything other than a New York contract, not a Texas contract. May even been consummated in New York, but it is applicable in Texas, and because of its applicability it would bring the Texas law into effect and cause the Texas law to apply then. Then I am willing to go forward with the trial [184] and let you pursue your remedy from that standpoint. I will be happy to hear from counsel early tomorrow morning in regards to the matter. In other words, Mr. Dixie, if you disagree with counsel to the effect that you do not think that Texas law would apply, even though the details of the operation and so forth come through the Beaumont office, then you can be prepared to present argument in behalf of your position in the morning.

We will stand in recess until 9:30.

The Marshal: Everyone rise, please.

Reporter's Note: Whereupon the Noon recess was taken and Court resumed on 6-27-72.)

[185] MORNING SESSION

The Court: Please be seated. We are ready to proceed. I think the proper procedure under these circumstances will be for both parties to offer such evidence as you wish to offer, after that why we will permit you to argue the case. So you may proceed, Mr. Hambright.

Mr. Hambright: I would like to advise that Mr. Tucker's absence is occasioned by the fact that he is in Dallas, attending the funeral of his wife's brother-in-law, who was on that plane that crashed in New Mexico with those geologists the other day.

The Court: I heard about that last night and I am sorry to hear it.

Mr. Hambright: If it please the Court, we are prepared to go forward with Mr. Knepper without arguing the case on the merits, I did have a statement of position that I understood may [186] be helpful to the Court and the other parties, and if the Court would prefer, we will defer that but—

The Court: It doesn't matter, it may be just as well for you to go ahead and state your position.

Mr. Hambright: Thank you, Your Honor. It necessarily requires a reference to an authority or two that Mr. Dixie mentioned about two that we have, but basically it is not a full discussion of the authorities by any means. I will state our position. Yesterday the Court inquired as to our opinion about this case. Given the proposition that the Court was not persuaded that this contract was executed in Texas, and from that point onward I would like to briefly give our position on those circumstances. It is the position of the plaintiff that regardless of the place of execution of this labor contract, contract provisions that are violative of the [187] Texas Public policy will not be enforced in the State of Texas. Now this is our basic position in the case. We did allege and plead the execution in Texas because of the double execution the Court is now familiar with. This was put in there as showing not only the place of execution but the place where the contract was applied and without re-opening that question and bearing in mind the Court's announcement of his feelings on that I would like to say that the fact that they did meet in Beaumont and approve, read it, if you will, and straighten out the things and it is printed in Beaumont independently of the place of execution, this is evidence, we think, that the contract was applied in Texas. It was meant to be applied here because this is where they came to do these things. This is where they came to proofread it and print it and all the company officials signed it

here. So laying aside entirely the legal concept of where it was executed, [188] nevertheless we would urge the Court that this is the very strongest evidence that it was meant to be applied here because this is where they came to do the deed and get it circulated and get it signed by the company officials and put it in final form. But turning now to the basic inquiry of the case, as we stated yesterday the Taft-Hartley Act in 14b speaks in terms of where a contract is executed or applied and they used the disjunctive word "or", and we would like to advise the Court as late as May of this year the Government itself through its highest office of making announcements of the construction of these things to guide National Labor Relations Board field offices around the company made a determination reinforcing what I have just told the Court, and without going into this in any length, I would just advise the Court that the general counsel for the [189] NLRB in his May 30, 1972 quarterly report of important case developments, members of the Labor Board, which I am sure Mr. Dixie has or I will make available to him, discussed the situation where a company and the Union got in a fuss because they were bargaining for a contract and the Union insisted on a agency shop clause being put in there and the company said you can't do that because it violates the State law, and the Union persisted, so the company filed an unfair labor practice charge against the Union and the General Counsel for the N.L.R.B. was called upon to pass on the matter and he stated that the United States Supreme Court in the Shimmerhorn case holds that an agency shop clause does violate the State Right-to-Work law and it is properly prohibited by a state and I would like to read one sentence out of that: "In a case before the General Counsel the highest [190] state court had not ruled on the illegality on the agency shop clause under the State Right-to-Work Law having declined to do so in the one case which this issue reached the Court, but the State Trial Court and the State Attorney General had both construed the law to include the agency shop clause as the prescribed form of Union

security and these opinions in the absence of disagreements from the state Supreme Court were viewed establishing that the state law prescribed the execution or enforcement of an agency shop agreement. I think that is important to us in several respects. The Court is aware that the Attorney General of Texas has so held. The opinion is in evidence and I have a communication from the Attorney General's office dated this year advising that that opinion is still in force and effect. This shows that the Government itself [191] acknowledges the validity of these and also the point I am addressing myself to is the prefaces that it is either the execution or enforcement of this labor contract within the borders of the state and so, again, in our case here it is our position that regardless if they had executed it in New Jersey or Arkansas or anywhere, if it is to be applied here and if it violates the public policy of the State of Texas, it should not be enforced here and this is recognized by the Government itself. Now in the case Mr. Dixie mentioned to Your Honor yesterday, the Mustang Aviation case about the extra-territorial effect of the Texas law, we think that is begging the question. It speaks of extra-territorial effect and this is not present in our case here. We would submit, for instance, in the Mustang Aviation case a man from Texas went up to Colorado and was killed in an air- [192] plane crash and the Supreme Court of Texas held that our Wrongful Death Statute does not have extra-territorial force, and that is acknowledged to be so and yet the Court went right on to say in headnote 2 of the opinion that this statute, this Texas Wrongful Death Statute, was intended to take care of the rights of a Texas citizen wherever he might die and wherever he might go and a cause of action arise. They pointed out that the legislature has vested rights in the Texas citizen and so in the case I think that is important for two reasons. First, it shows that Texas citizens are entitled to protection of the law, Texas residents, wherever they might go, but in our case bring it down to the Court's remarks yesterday, the extra-territorial effect, where is this contract being applied, and I

think the truth the Court has heard heretofore establishes that the employees under this labor contract [193] are actually within the State of Texas, physically located here, frequently and repetitively. They all come here from time to time, some of them more than others. The proof shows that sixty percent of them were actually hired within the State of Texas. The active hiring took place here. The proof shows that one hundred percent of them, if their employment is severed, will be terminated in the State of Texas. One hundred percent of them will be actually terminated in the State of Texas when their employment is ultimately terminated, whether its because of retirement or what-have-you, the deed is done here in Beaumont, Texas. The proof shows that the employer's manager and all of his staff, in all of the departments are here, they live in the City of Beaumont, and they have a building out here where they conduct the business. Vacation payment, the checks are issued [194] here, the allotment checks are issued in Dallas, the U.S. income tax on every man is computed in Texas and handled in Texas, financial dealings totaling millions of dollars are done here, and this goes to the contention of Mr. Dixie that we are trying to apply a Texas statute in the extra-territorial manner and the point, our contention is that that is not correct because of the vast amount of business that is done here, particularly in the field of labor relations, as well as provisioning of the ships and taking care of the needs and physical needs of the business itself. Now we have shown also—

The Court: I don't think you need to emphasize the involvement of Texas in this operation. I don't think you need to do that. I think the Court would have to make that finding.

Mr. Hambright: Yes, sir.

[195] The Court: You may—

Mr. Hambright: Well, may I advise the Court of one other statute?

The Court: The only question I had was the matter of application and you have explained it sufficiently to the Court, and I am willing to go ahead and proceed with the trial. In fact, I had already made up my mind to do so anyway, and I don't want to curtail counsel in his argument, I think there will be time for that at the conclusion of the evidence. Now since you have made your statement, in fairness to Mr. Dixie I think we should give him a chance if he wishes to. Frankly, I don't know how you can enlighten the Court any more at this time, it might be because I think we ought to go ahead with the evidence.

Mr. Dixie: I think so.

The Court: Then you may make your arguments later.

Mr. Hambright: Thank you, Your [196] Honor.

The Court: All right, you may proceed.

(Reporter's Note: Whereupon Mr. Knepper resumed the witness stand.)

REDIRECT EXAMINATION

By Mr. Hambright:

Q. Mr. Knepper, do you know whether or not this labor contract contains what is called a dues check-off clause?

A. Yes, sir, it does.

Q. In essence what does this clause say?

A. It provides that an employee who wishes to can notify the company through a prescribed form that he would like his initiation fee or Union dues deducted from his pay and forwarded to the Union. It also has annual escape clauses in it.

Q. Does it have a form that the employee has to sign?

A. Yes, sir, the form is prescribed in the agreement, labor contract.

Q. What page is that on, do you recall?

[197] A. If I had an agreement I could find it for you. I don't have one in my hand.

Q. Here is one, sir.

A. On page 3 the format is given for the dues check-off letter.

Q. All right, sir, does this authorization run from the employee to his employer?

A. Yes, sir, it prescribes that it be addressed to Mobil Oil Corporation Marine Transportation Department, Gulf East Coast Operations, P.O. Box 3444, Beaumont, Texas, 77704.

Q. Are these dues check-offs sent to you here in Beaumont by the employees?

A. Yes, sir, we have a considerable number of them.

Q. Do you have there after computed the monthly amount of money that you must send to the Union?

A. Yes, sir, that is done.

Q. Is that done by your office in Beaumont, Texas?

A. Yes, sir, Mr. Shanigan's personnel section.

Q. All right, sir, do you then notify the Union of the correct amount and make payment to the Union?

[198] A. Yes, sir, we prepare a letter to the Union and tell them what men are covered and what new additions there are and what releases.

The Clerk: Plaintiff's Exhibit 14.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit 14 for identification.)

A. We send that letter along with an authorization to our Dallas payroll office to send the Union the proper

amount of money with a check, a check with a letter.

Mr. Hambright: Your Honor, may I show this to counsel before the witness, the copies are not legible but he has the original in his file.

The Court: All right.

By Mr. Hambright:

Q. Mr. Knepper, I show you what has been marked as Plaintiff's Exhibit 14, with two sheets, will you tell us what that is?

A. Well, the first sheet is also from my office over my signature to our payroll people in Dallas, and the topic is O-CAW dues. It instructs [199] them to draw a check on a certain amount, payable to the Local Union and mail it in with the letter which I am furnishing you in the envelope.

Q. What is the date of that letter, please, sir?

A. This is August 3rd, 1971, but this is typical of the letter that goes every month.

Q. You do that every month?

A. Yes, sir.

Q. All right, sir, how much is the amount of money?

A. It says please draw a check in the amount of $2,253.00.

Q. All right, and do I understand you to say that you sent this to Dallas and told them to draw the check in Dallas, and mail it to the Union.

A. That is correct.

Q. All right, on the second page of that exhibit what are those computations there appearing in that letter to the Local?

A. Well, this is a letter to the Local which would accompany the check. It says: "Enclosed is our check for

$2,253.00", and that it represents dues and initiation fees for all OCAW [200] members with authorized dues deductions in force on January 1, 1971, and it tabulates how many members there were at $8.00, and how many initiation fees at $15.00, and what the total is and then we go on and tell them who the new people are on the list and also which names are deleted.

Q. Is all of this body of work done in your office?

A. Yes, sir.

Q. It is done each month?

A. It is monthly, yes.

Q. Would you say that this two thousand some odd dollar sum is or is not fairly representative of the amount of money that goes off each month to the Union?

A. Yes, sir, it is typical.

Q. Typical?

A. Yes, sir.

Q. All right, sir. Thank you.

Mr. Hambright: We offer as Plaintiff's Exhibit No. 14 this, Your Honor.

The Court: All right.

(Reporter's Note: Whereupon [201] Plaintiff's Exhibit No. 14 was received in evidence.)

By Mr. Hambright:

Q. Mr. Knepper, is this the only point of contact between your company and the Union financial matters of this sort, your office in Beaumont, Texas?

A. Yes, sir, this isn't done anywhere else.

Mr. Hambright: Mark that as Plaintiff's Exhibit 15.

The Clerk: Plaintiff's Exhibit No. 15.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit No. 15 for identification.)

By Mr. Hambright:

Q. I hand you what has been previously marked as Plaintiff's Exhibit 15. Would you identify that, please, sir?

A. This is a photograph of the building in which my offices are located in Beaumont.

Mr. Hambright: May we have this admitted, Your Honor, would you hand that up?

The Court: Yes.

[202] (Reporter's Note: Whereupon Plaintiff's Exhibit No. 15 was received in evidence.)

By Mr. Hambright:

Q. Now, Mr. Knepper, yesterday Mr. Dixie asked you to give him some identification on a number of fifth level grievances that were handled in your office in Beaumont, Texas, do you recall that?

A. Yes, sir, I do, sir.

Q. Do you recall the estimate of the number of such occurrences that you gave Mr. Dixie, what number did you give Mr. Dixie yesterday as the approximate number of grievances that have been so handled?

A. Well, I believe in response to your question, sir, I said about twenty.

Q. All right, sir, you told Mr. Dixie about twenty and he asked you some identification and you promised to look into it?

A. Yes.

Q. All right, sir, have you looked into it and do you wish to change the number or clarify that number?

A. Yes, sir, we have gone through our grievance [203]

file and I find that during the course of this agreement to date we have had 26 formal fifth level grievances presented to my office in Beaumont. In addition we have had three letters which are not on a grievance form which I would consider fifth level grievances.

Q. All right, sir, now, in addition to that I will ask you whether or not right after this contract was first placed into effect and before any actual number of grievances had risen you had an occasion to meet with Union representatives in your office in Beaumont, Texas, to discuss the administration of the labor contract?

A. Yes, sir, that is true.

Q. I will ask you if you have in your possession any type of personal notes or scratch sheets or whatever you might call it?

A. There is a number of notes in our grievance file. As I say, as I said to Mr. Dixie yesterday, we don't keep formal minutes of the formal meetings, often we transcribe the notes after the proper action has been taken. I did find one that was dated in December of 1969.

Q. All right, sir, would you please refer to [204] your notes of the December, 1969 meeting, when you find that?

A. Yes, sir, I have a Xerox copy of a memorandum that I wrote in longhand. Do you want me to describe it?

Q. Just let me ask you these questions and it might shorten it. What is the date of the meeting?

A. This is dated December 12, 1969.

Q. At that time your new labor contract had been in force approximately how long?

A. A month and twelve days, I suppose.

Q. All right, sir, who was present at that meeting?

A. The meeting, my notes show I met there with John Perrio and L. A. Papich in my office.

Q. And is that Mr. Perrio who was served in this case as President of the Union?

A. Yes, sir.

Q. Mr. Papich is your—

A. Maintenance superintendent.

Q. All right, sir, would you tell the Court in your own words what was the subject matter of some of the highlights of that meeting?

[205] A. These notes are fragmentary, but I can reconstruct some of the things. One note says Siofic not paid for Labor Day overtime for 0000 to 1500 when strike began. Agreed to investigate. Then I have a note of overtime is payable and then another note personnel section. So I evidently advised the personnel section that they should take care of this matter.

Q. Did this involve a dispute between the Union and the company as to the proper manner of payment of this individual or at least a dispute against your hands?

A. Yes, sir, I think it would be a dispute that would be a grievance if they hadn't settled it at that time.

Q. Did you make the decision?

A. I certainly did, yes, sir.

Q. Did you talk about others at that meeting?

A. Yes, there was also a note that said Siofic requested longshore rate for offloading cargo and my note after that says refused and the note out in the margin says no action required. This evidently is one that the Union didn't care to carry further because I don't find any records [206] of a formal grievance coming out of this one.

Q. So I take it then that the last one was settled in the Union's favor and that one was settled in the company's favor? Is this a fair statement or have I oversimplified it?

A. No, I think this is correct.

Q. Did you do any other business that day?

A. I have a note here that says that "Sacony-Vacuum fire and boat drill held on Saturday. Overtime not paid to those off duty. Agreed payable." This was a new clause in our new agreement which evidently wasn't clearly understood by the officers on the ship that implemented grievances, implemented the contract, at least on a fifth level, and so I have a note here, it says agreed payable. I also have a note L.A.P. discussed it with Master. This would be a case where I agreed that they had interpreted the contract correctly that we would pay the people and also that we instruct our supervisors that they should comport themselves so.

Q. Do I understand that those initials refer to Mr. Papich?

A. Yes, sir.

[207] Q. Do I interpret that that you told him to tell the Master on the tankers henceforth to pay in accordance with the rulings you made?

A. Yes, sir.

Q. Now this business of a fire drill or boat drill, is it?

A. Yes, sir.

Q. And the question is what happens if that occurred on Saturday, is that it, when some people are off duty?

A. Yes, sir.

Q. Would you tell me if this matter would arise wherever a ship might be sailing at the time?

A. Yes, sir, wherever they had a fire drill on Saturday, it will.

Q. All right, sir.

A. The Master is required to have periodic fire drills.

Q. All right, now do you have any other business that day?

A. Well, there is a note here pertaining to an employee missed ship, inquired about pay, says would be payable as soon as his voucher is [208] received from vessel, and that the man would like to be rehired and we would investigate it and—

Q. Well, that is enough.

A. I can't tell from this whether we did rehire him or what we did, but this, I don't think was as much a grievance as a personnel problem, the man wanted some help with it.

Q. All right, sir, thank you, Mr. Knepper. Now in response to Mr. Dixie's request, once these formal grievances started coming in did you go through and compile a list of those last night?

A. Yes, sir, we did.

The Clerk: Plaintiff's Exhibit 16.

(Reporter's Note: Whereupon it was marked Plaintiff's Exhibit No. 16 for identification.)

By Mr. Hambright:

Q. I hand you a list of some 29 numbered items marked Plaintiff's Exhibit 16. Was that what you looked up last night and had prepared?

A. Yes, sir, I prepared this by going through my grievance file.

Q. All right, I notice that the latest one on the list is dated February of 1972, and the earliest [209] one is dated February of 1970. So would you explain that?

A. I believe, sir, the latest one—unfortunately these are not in exact order. I believe the latest one is really March 17, 1972.

Q. All right, sir.

A. But the earliest one being in '70, I think the reason that there wasn't any earlier, that the strike ended in November of '69, and there just wasn't any that reached that stage prior to that time.

Q. All right, sir, but in any event, all of these arose under the present labor contract beginning in about February of 1970 and coming on down to date?

A. Yes, sir, that is correct.

Q. And this is the period inquired about yesterday, is that correct?

A. Yes, sir.

Q. All right, sir, were these matters submitted to you in the ordinary course of business of this employer?

A. Yes, sir, these came to me some by hand and some by mail, some were discussed before they were [210] formalized into a written grievance and all were answered from my office in Beaumont over my signature.

Q. Did you and your colleagues in Beaumont, Texas, who—such as Mr. Papich or Mr. Shanigan, did you make the decision as to what happened to these 29 fifth level complaints?

A. Very definitely, sir.

Q. Do these 29 numbered items represent matters had they not been resolved at that meeting in your office in Beaumont, could have proceeded to arbitration?

A. Yes, sir, these were all fifth level grievances and the next time would be arbitration if they weren't settled.

Q. I believe you testified yesterday about four had gone to arbitration under this new labor contract?

A. Yes, sir, that's correct.

Mr. Hambright: We offer Plaintiff's Exhibit No. 16, the list of 29 top level meetings, and Mr. Dixie yesterday requested that we produce minutes and I would like to state to [211] the Court and to counsel that we welcome any interrogation concerning any of those but the witness has testified that he does not in all cases have notes about these, and so we are not offering any additional notes at this time, but—

The Court: The explanation will be accepted.

The Clerk: Plaintiff's Exhibit 17.

(Reporter's Note: Whereupon it was marked Plaintiff's 17 for identification.)

By Mr. Hambright:

Q. This Plaintiff's Exhibit 17 that has been marked, is that case sent you from the 23rd Region. May it please the Court, we offer in evidence what is marked as Plaintiff's Exhibit 17, it gives a decision of the National Labor Relations Board trial examiner in Houston, Texas, dated March 30, 1972, and it related to seafaring employees. May that be admitted, it was in our pre-trial order?

[212] The Court: Sir?

Mr. Hambright: May this be admitted?

The Court: Yes, it may be admitted.

(Reporter's Note: Whereupon Plaintiff's Exhibit 17 was received in evidence.)

Mr. Hambright: We pass the witness.

The Court: Do you have any further questions?

Mr. Dixie: Just a few, Your Honor.

RECROSS EXAMINATION

By Mr. Dixie:

Q. Mr. Knepper, do you have Plaintiff's Exhibit 16 before you?

A. Yes, sir, I do.

Q. In the left-hand column you have the date of the grievance?

A. Yes, sir.

Q. Is that the date on the grievance form?

[213] A. Yes, sir, that is the date that appears next to the Union officer's signature.

Q. Then I notice in that left-hand column sometimes you have the word "letter written under the date", does that mean that the matter was submitted to you by a letter instead of by the regular grievance form?

A. Yes, sir, that's what that means.

Q. Now in the next column is entitled "submitted by", does that show the name of the man who signed the grievance form or the letter?

A. Well, generally there are two people that sign the grievance, the grievant himself and the Union officer that's carrying the grievance for him, this is the signature of the Union officer who presented the grievance.

Q. So that the submitted by means the signature on the form, right?

A. The signature of the Union officer on the form.

Q. Now the next column you give us the subject, in the next column you give us the name of the grievant, that is, the individual employee who was involved in the episode, is that correct?

[214] A. Yes.

Q. And then the next column is entitled "Date of Reply". Is that a date on a written communication from the Company to the Union?

A. It is, yes.

Q. Now those are the five columns that you have given us here and I notice that you don't have anywhere on here the date of these so-called hearings. Do you have dates of hearings in these matters?

A. Sir, I have never said that we have formal hearings in these matters.

Q. You never said. Now let's see, your lawyer asked you had they not been resolved in fifth level meetings, they would have gone to arbitration, and you said yes. Now what is the date of these meetings or hearings or anything else you want to call them?

A. I don't have an accurate record of when each one of these were discussed.

Q. Now then, when you had quarterly meetings in New York City the company prepared formal minutes, didn't they?

A. No, sir.

[215] Q. Didn't you send minutes to the Union of what you did and discussed?

A. Not minutes, no, sir.

Q. What did you send?

A. Occasionally we would send them a letter telling them of what we agreed or disagreed with. We never have kept minutes, formal minutes that are kept, the notes we kept for ourselves.

Q. Well, doesn't this get down to the proposition that at Beaumont, from time to time, you discussed with Mr. Perrio your mutual business of problems that arise aboard ships, isn't that what this comes to?

A. Certainly we discussed from time to time mutual problems. We have always discussed grievances with him.

Q. But the contractual grievance procedure takes place on ship, does it not, in the first three steps?

A. Yes, sir, yes, indeed.

Q. And it takes place in New York in arbitration, is that correct?

A. It has, it doesn't necessarily have to.

Q. Well, doesn't this get down to the proposition that

Q. And the thing that happened in Beaumont is [216] that you receive letters and you answer by letter?

A. And make decisions.

Q. Is that correct?

A. And make decisions.

Q. And you make decisions. All right, may I see the file you are looking at when you told us about a meeting in 1969, with Mr. Papich.

A. Is it proper for me, Your Honor, there is a number of confidential company notices in the file.

The Court: Maybe you had better check with him, Mr. Hambright, and advise him in this regard.

Mr. Hambright: Could I have that request again, please?

Mr. Dixie: I want to see the file he examined when he told us that he found references to a meeting between him and Mr. Perrio and Mr. Papich in December of 1969.

Mr. Hambright: Well, that is his work sheet, I believe he read from his own notes there. I thought you were [217] asking for the entire series of confidential file.

Mr. Dixie: I thought that's where it was. I thought that's where he was looking.

The Court: All right, if you are referring to these notes, if you have no objection to showing them to him you may

do so. If you have an objection you may state your objection.

Mr. Hambright: No objection, Your Honor.

The Court: All right.

(Reporter's Note: Whereupon there was a short pause in the proceedings.)

By Mr. Dixie:

Q. All right, now then, is this one piece of paper the only written reference you can find in your records of a meeting at Beaumont, between the company and the Union?

A. That is the only piece that we turned up last night.

Q. That's the only one you turned up. All right, nothing for 1970? Nothing for 1971 or 1972 in your [218] records, right?

A. I can demonstrate that some of these grievances were dated the same day that I received them, which clearly reinforces my memory that Mr. Weeks and Mr. Perrio handed it to me that day.

Mr. Dixie: I pass the witness.

The Court: Anything further, Mr. Hambright?

Mr. Hambright: No, Your Honor.

The Court: All right, Mr. Knepper, you may step down.

You may call your next witness.

Mr. Hambright: If the Court please, the Plaintiff will rest. I would advise the Court that the pretrial order was signed earlier this morning.

The Court: It may be filed.

Were you sworn with the other witnesses yesterday?

The Witness: Yes, sir.

The Court: Have a seat. You may proceed.

[219] DONALD SANHUEZA, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

By Mr. Dixie:

Q. Will you state your full name?

A. Donald Sanhueza.

Q. How old a man are you?

A. 32.

Q. Where do you live?

A. New Jersey.

Q. What position do you occupy with the Union?

A. Financial Secretary.

Q. And do you also work for the company?

A. Yes, sir, I do.

Q. How long have you been working for the company?

A. Fifteen years.

Q. Fifeen years, and in what capacity do you [220] work for the company?

A. Oiler.

Q. You are an oiler?

A. That's right.

Q. Now then, I want to ask you a few questions. Has the Union ever asked the company to discharge a new employee because he didn't want to join the Union?

A. No, we haven't.

Q. Members of the Union except those who are new on board?

A. That's right.

Q. Will you tell the Court how many of the people are on check-off? That is, how many of them have signed check-off authorizations to take out Union dues from their checks?

A. Approximately 281.

Q. Do you have members who pay by hand?

A. We do.

Q. Approximately how many members pay by hand?

A. Approximately some fifteen to twenty.

Q. All right, Mr. Sanhueza, we already have evidence here that a man works approximately sixty days on board ship and then he has thirty [221] days off. Are you in a position to give us a little bit more precise figures on that?

A. We work approximately 85 days and off approximately 37.

Q. On 85 and off 67?

A. 37.

Q. 37. That is the general pattern now. Now in the 85 days that a man is on board ship what hours of the day does he work? How many hours a day does he work?

A. Eight hours a day.

Q. Eight hours a day. Is that divided into watches?

A. Watches, they work four hours and off eight, back for four.

Q. Will you tell us where the people usually catch the ships that they are working on? Where do they board ship?

A. Any port the ship may be, it varies as to what port they may be at. The Port of Maine, Portsmouth, Providence, New York, New Jersey, Corpus Christi, Beaumont, really all of them.

Q. Let us suppose that there is a man who lives in Beaumont, Texas, and let us suppose that he is [222] scheduled to board a ship on the 1st day of July, and let us suppose that that ship is in the Port of New York, on the 1st day of July. Would you tell us how that man gets to New York to board the ship?

A. The company will fly the man to New York to meet the ship.

Q. Does the company try to schedule these men so they catch the port—correction, catch the ship at the port closest to their homes?

A. Right.

Q. They try to do that?

A. Yes, sir.

Q. Does it always work out that way?

A. No, sir, it doesn't.

Q. Are there any occasions when a man is on the 37 days of vacation and will be called back to work sooner than 37 days?

A. Yes, sir, they do.

Q. What would be that occasion?

A. Usually in creating—they will call a man back early sometimes just due to illness or emergency leave of absence. They will call other people back.

[223] Q. Are there circumstances in which a man is scheduled to work 85 days but doesn't work his full 85 days?

A. There are some occasions.

Q. What would be that type of occasion, would that be sickness or injury or family emergency?

A. Surplus of men, that particular rating.

Q. What is your answer?

A. Yes, sir, they would relieve him early.

Q. Now then, do you know whether the company provides medical facilities in all of the ports to which its ships go?

A. Subject to Public Health hospitals.

Q. All right, now the company has one doctor to whom they refer or one or more doctors in the refinery to whom they refer the men when it is necessary. I want to ask you whether or not the company has doctors in New York to whom it refers the men when necessary?

A. Yes, sir, they do.

Q. Do you know about other ports?

A. Providence, Rhode Island.

Q. Do you know about any others?

A. I am not familiar with them.

Q. Now we have evidence before the Court here [224] that the MOBIL LUBE, the S/S MOBIL LUBE is on charter in the Pacific Ocean at this time. Will you tell us whether or not this is the only charter of this kind for foreign voyages that you know about?

A. I believe they have one more.

Q. Which one is that?

A. The MOBIL FUEL.

Q. Have they had charter ships, ships under charter before, before the MOBIL LUBE and the MOBIL FUEL, that you know about? Were there any charters last year or the year before is the question I am asking?

A. I believe so.

Q. What ships do you believe were under charter?

A. I believe the MOBIL GAS was running a charter run.

Q. What?

A. MOBIL GAS.

Q. To whom was the MOBIL GAS under charter, do you know?

A. It is a firm in Texas City.

Q. And what was the normal run of the MOBIL GAS at that time, while it was under charter?

[22] A. Texas City to Boston.

Q. How long did that charter arrangement last, approximately?

A. Somewhere in the neighborhood of two months.

Q. Do you have knowledge of the fleet of ships of this company involved in this case going on foreign voyages?

A. Sir?

Q. In the past year?

A. Yes.

Q. Would you tell us the extent of that?

A. Usually they go foreign on a MFTS charter, plus the company sold two vessels which made offshore trips.

Q. Where would they go, what part of the world would they go to on the foreign voyages?

A. Well, two vessels that the company sold went to—I believe it was Spain, their destination point was—

Mr. Dixie: Your Honor, I am having trouble understanding my own witness. May I stand here?

The Court: Yes, you may.

[226] By Mr. Dixie:

Q. What was your last answer, when they were on foreign articles what part of the world would they go to?

A. The two vessels that the company sold went all over Europe. The only thing I can remember, I think their final destination was Spain.

Q. What was the name of the two vessels that the company sold?

A. The KOLINA and the SCIOTIC (phonetic).

Q. Approximately when were they sold?

A. About a year, a year and a half ago.

Q. About a year and a half ago? Before being sold were those two vessels primarily engaged in foreign commerce?

A. Yes, sir, they were.

Q. Were they manned by people that were covered by your labor contracts?

A. Yes.

Q. All right, did you, at my request, make a study of the time spent in Texas ports by the eight ships here involved during the last month?

A. Yes, sir, I did.

Q. What materials did you have available to [227] make that study?

A. From the logs that we receive from the company?

Q. Would you show us one of those so the Court can see what it is?

(Reporter's Note: Whereupon there was a pause in the proceedings at this time.)

Q. All right now this is regularly furnished to you by the company?

A. Yes, sir, it is.

Q. What information is on this?

A. It gives the date the work sheet was made up on this log and it has south and it has the name of the ship, docking in Beaumont at 0740 on 6-22, estimated time of departure at 1400 on 6-23, for Providence, Rhode Island.

Q. So they give you the time of arrival of a ship in Beaumont, and they give you the estimated time of departure?

A. Yes, sir.

Q. All right, then do they give it for all other ports?

A. Yes, sir.

[228] Q. Both in the Gulf Coast and on the East Coast?

A. Yes, sir.

Q. Do they give you the time when the ship is on the high seas?

A. No, sir, this is only the docking time.

Q. But you know that the ship has to be on the high seas in the meantime?

A. That's right.

Q. All right, now take your notes and give us the name of the ship, the period of time covered and the time that that ship was in the Port of Beaumont.

A. Well, one work sheet I have, the MOBIL ARROW from May 9th to June the 11th, total days being 34, total time spent in the State of Texas, 42 hours.

Q. 42 hours and 34 days for that ship?

A. That's right.

Q. Now go to the next one, give its name.

A. I have the ECLIPSE, April 27th to June 22nd, total of 56 days, total time in the State of Texas, 99 hours.

Q. By the way, that was all at Beaumont, or was [229] that—

A. Different ports in the State of Texas.

Q. All right, go to the next one.

A. The MOBIL FUEL, May 8th to June 7th, total days, 31; total time in Texas, 14 hours.

Q. Give us the next one.

A. The MOBIL GAS, June 1st to June 23rd; total days, 23; total time in Texas, 43 hours.

Q. Give us the next one.

A. The MOBIL LUBE, May 16th to July 8th would be a total of 56 days. No time in the State of Texas.

Q. All right, now then, from your knowledge, you come to Texas yourself regularly, do you not, when you are working?

A. Yes, sir, I do.

Q. Do you know from your own knowledge whether or not that time that you traced for the last month or so is typical of the normal operations of the company?

A. Yes, it is.

Q. All right, now let us say that a ship comes in to the Port of Beaumont for the purpose of [230] being loaded. Do the members of your crew perform any work other than aboard the ship? In other words, do they have any shore duties?

A. No, we do not.

Q. All the work you do is aboard ship then?

A. Yes.

Q. Do the men come ashore when the ship is in the Port of Beaumont?

A. If you are not working, yes.

Q. All right, how long would the men have shore leave to come ashore?

A. Well, if the ship docks exactly at a good time for that individual, he would have eight hours.

Q. Eight hours would be the maximum? Well, eight hours off is the maximum time off duty, is that right?

A. That's right.

Q. So the longest time that that individual could spend ashore would be eight hours, and that would be for his personal purposes?

A. Right.

Q. No duties to perform. Do you know whether or not the company provides stores and parts for their [231] ships in ports other than the Port of Beaumont?

A. Yes, sir.

Q. They regularly provide the necessary spare parts and repairs out of New York, as well as out of Beaumont?

A. All over.

Q. All ports? And they take on provisions in all ports?

A. Yes, they do.

Q. You have an office in New York?

A. Yes, sir.

Q. Do you have dealings with the company in New York?

A. Yes, sir, we do.

Q. What kind of dealings do you have with the company in New York?

A. We have all our meetings in New York.

Q. How often do you have those meetings?

A. Quarterly.

Q. Four times a year?

A. That's right.

Q. After those meetings are held does the company furnish you with any kind of summary or minutes of what was said and done at the meeting?

[232] A. They usually answer to what we spoke about with regard to if they can't settle a final grievance in New York, we prepare for arbitration.

Q. You tell the Court that you discuss the final settlement of grievances in New York and not in Beaumont?

A. Yes, sir, we do.

Q. Do you know Mr. Knepper here?

A. Yes, sir, I do.

Q. Have you ever come to Beaumont to discuss the settlement of grievances here with him?

A. I have never.

Q. Have you ever settled grievances that didn't go to arbitration? Have you settled grievances so as to avoid arbitration?

A. Yes, sir, we have.

Q. With whom have you settled?

A. With Mr. Knepper and his committee.

Q. Mr. Knepper and his committee, and what did the committee consist of?

A. Captain Papich, Mr. Dayton and Mr. Shanaghan.

Q. Do you know—are you the man who receives the dues, monies from the company each month?

[233] A. Yes, sir.

Q. Where do you receive it?

A. In New York.

Q. Where do you keep it?

A. In New York.

Q. Is Local 801 a part of any administrative district of the Oil Workers International?

A. Yes, sir, it is.

Q. What district does it belong to?

A. District No. 8.

Q. Where is District No. 8?

A. Union, New Jersey.

Q. Are you familiar with the fact that the Oil Workers District No. 4 is located down here in Texas?

A. Yes, I am.

Q. Do you belong to District 4 for any purpose?

A. No, we do not.

Q. Do you participate in District 4 activities for any purpose?

A. We do not.

Q. Do you have a staff man that helps—

Mr. Hambright: May it please the ....

[235] Q. What is his name?

A. Mr. Staggart.

Q. Where does he live?

A. Pennsylvania.

Q. What district is he attached to?

A. District No. 8.

Q. Does he have anything to do with the Texas District administratively?

A. No, sir, he does not.

Q. Does he ever come to Texas to do business with the company that you know of?

A. No, he doesn't.

Q. It has been claimed here that you have all of your meetings in New York for the convenience of the Union. Do you know why you have meetings in New York, Mr. Sanhereza?

A. They have, Mr. Knepper has his staff of Mr. Fisher, his supervisor, and legal counsel.

Q. Have you ever heard Mr. Knepper discuss with you that he intended to confer with his associates, like Mr. Fisher and Mr. Luck, before making some kind of a deal with you?

A. The only time I ever heard that was at [236] negotiations, yes.

Q. At negotiations. All right, are employees hired in New York?

A. Yes.

Q. Do you know if employees are fired in New York?

A. If they are fired aboard ship it would be from New York, wherever the ship may be.

Q. In other words, tell the Court what has been the practice about what port a man will leave the ship from because he has been terminated by the Master.

A. The Master has the authority to dismiss anybody at any port.

Q. All right, is that in fact done?

A. Yes, it is.

Q. Now we have in evidence here a letter written in July of 1971, a Union news letter to your members that discusses this agency shop. I want to ask you whether you addressed that communication to the company or whether you intended for the company to get it or see it?

A. It was sent to the Union membership.

[237] Q. And was it sent to the Union membership only?

A. That's correct.

Q. The statement has been made here that there is at least one of these ships in the Port of Beaumont one hundred percent of the time or maybe I have misunderstood it, do you know whether or not that is the truth, that there is at least one ship here one hundred percent of the time?

A. No, sir.

Mr. Hambright: May it please the Court, I did not hear that statement from any witness, and it was never uttered by me. I think it would be improper to use that question.

The Court: There might be a misunderstanding there, Mr. Dixie.

Mr. Dixie:

Q. In other words, have you come in aboard a ship, into the Port of Beaumont and seen that there was no other Mobil Oil ships in port when you got there?

A. Yes, sir.

[238] Q. How often has that happened?

A. Well, there is eight ships, they only reach Beaumont

approximately twice in a calendar month, so all the other days there wouldn't be no ship in.

The Court: I think we will have a little recess. We will stand in recess for fifteen minutes, that will be ten minutes after eleven by the clock in the courtroom.

The Marshal: Everyone rise, please.

(Reporter's Note: Whereupon a fifteen minute recess was taken and court resumed at 11:10 A.M.)

The Court: You may proceed. You may resume, Mr. Dixie.

By Mr. Dixie:

Q. Mr. Sanhueza, I am going to show you a draft of a document here which bears on its front page the notation: "Pension Plan for Unlicensed Seamen of U. S. Flag Ocean-going Tankers of the Gulf, East Coast Operations of the Marine Transportation Department of Mobil Oil Corpora-[239] tion". Do you recognize that document?

A. Yes, I do.

Q. What is the source of that document?

A. It describes the benefits that we receive of our pension plan and how it will be administered.

Q. All right, and who is the author of that?

A. The company.

Q. Do they present it to you?

A. Yes, sir, they did.

Q. Did you agree to it?

A. Yes.

Q. Do you sign it?

A. We signed the financial benefits that we receive.

Q. Now will you look at page 13 of that document and read to the Court the sentence about the laws of which state will govern the pension plan?

A. "The plan shall be governed by and construed in accordance with the law of the State of New York. Any interpretation of same by counsel of the corporation shall be exclusive as between corporation and it goes on and on".

Q. Is that the pension plan that is in effect [240] for your people now?

A. Yes, sir, it is.

Q. I pass the witness.

CROSS EXAMINATION

By Mr. Hambright:

Q. Mr. Sanhueza, I believe you testified a moment ago that you come to Texas regularly, is that correct?

A. Aboard ship, yes, sir.

Q. How long have you been employed with this employer?

A. Fifteen years.

Q. For fifteen years. Have you been coming to Texas regularly?

A. Aboard ship, yes, sir.

Q. Now, I believe you testified that there was some physical examination conducted in New York and perhaps elsewhere, you know of your own knowledge, do you not, that the company has a medical department in Beaumont, Texas also?

A. Yes, sir, I do.

Q. And you know of your own knowledge that more [241] physical exams are conducted there than any other place, don't you?

A. No, I do not.

Q. You testified that 281 employees were on check-offs. I take it this means the company is sending the Union money representing their dues?

A. That is correct.

Q. All right, sir, you know of your own knowledge that the money comes from Texas on the check-off letter, does it not?

A. Yes, I do.

Q. It is addressed to you as financial secretary?

A. No, it is addressed to the Local Union.

Q. Does it come to you as financial secretary?

A. My name does not appear on it but I receive it.

Q. You do receive it?

A. Yes, I do.

Q. And over the period of the last two or three years have you ever found any error or discrepancies on that?

A. Occasionally.

Q. Where do you go to get that clarified?

A. Usually I contact Mr. Shanaghan.

[242] Q. Mr. Shanaghan is in the courtroom, do you see him here today?

A. Yes, sir.

Q. You know him to be a resident citizen of Beaumont, Texas, do you not?

A. Yes, I do.

Q. He works for Mr. Knepper out here at headquarters office?

A. Yes.

Q. Mr. Shanaghan, I believe you testified that this so-called notice to employees went out to your membership and not to the company?

A. That's right.

Mr. Hambright: May I see Plaintiff's Exhibit 10?

(Reporter's Note: Clerk handing said exhibit to Mr. Hambright.)

By Mr. Hambright:

Q. Is this Plaintiff's Exhibit 10 the notice we are talking about?

A. Yes.

Q. That notice says in the second paragraph that if a new employee doesn't join the Union in effect you will have him fired, does it not?

[243] A. Yes, it does.

Q. Now, Mr. Sanhueza, there wasn't anything secrety about that notice, was there?

A. I don't really know what you mean by the word secret.

Q. You implied to Mr. Dixie that you sent that to your members but you did not send it to the company management and I am asking if you had made any effort to make that or keep that a secret?

A. No, it was addressed to the ship representative aboard ship for the sole purpose of Union members.

Q. You know of your own knowledge, do you not, that that was posted on the bullein board aboard the vessels?

A. No, I do not.

Q. If a company representative in the room, courtroom today, testified that he had saw it posted on the bulletin

board aboard ship, I will ask you this, would it be seen by members of the crew if it were on the bulletin board?

A. Possibility.

[244] Q. That's why you have Union bulletin board, isn't it?

A. That's right.

Q. Would it also be seen by non-members of the Union were it in fact posted on the bulletin board?

A. Yes, sir, it would.

Q. Would it also be seen by company officials who might go aboard ship on that bulletin board?

A. Yes, it would.

Q. You testified that in effect that notice says you were going to have the company fire a man that doesn't join the Union. Now it means what it says, does it not?

A. Yes, sir, it does.

Q. You told Mr. Dixie, however, that you all had never requested the company to fire anybody under that notice, is that right?

A. Yes.

Q. I believe you also told Mr. Dixie that everybody was a member of the Union?

A. Except new employees.

Q. Except anyone in the last thirty days, but [245] laying aside those, anyone more than thirty days I believe is a member of the Union, under your testimony?

A. No, sir, there are some that is after thirty that join.

Q. That some of them are delayed in joining?

A. That's right.

Q. But it is a fact then that if everyone is in the Union or else joins the Union within what you consider a reasonable time you, in fact, would have no reason to tell the company to fire anyone, would you?

A. I would not.

Q. All right, sir, and, as a matter of fact, when a man joins the Union you don't have any way of knowing personally, do you, Mr. Sanhueza, whether he did that voluntarily or whether he did it because of this notice stating he would be fired if he didn't?

A. No, I do not.

Q. Now I believe you testified that you had never been down to Beaumont for the purpose of talking to Mr. Knepper about a grievance?

A. That's correct, sir.

[246] Q. Now actually you are the financial secretary aren't you?

A. Yes, sir.

Q. You have other officers in the Union, don't you?

A. We do.

Q. Mr. Perrio is the President, isn't he?

A. Yes, sir.

Q. And you know of your own knowledge that he has been to Beaumont to talk to Mr. Knepper, don't you?

A. Yes, sir, I do.

Q. Do you have a man in there named Weeks?

A. Yes, sir.

Q. Is he an officer?

A. Yes, sir, he is.

Q. What is his official position?

A. Vice President.

Q. Vice President?

A. Yes, sir.

Q. Do you know of your own knowledge that he lives in San Augustine, Texas?

A. Yes, sir, I do.

Q. Don't you know of your own knowledge that he [247] has been to Beaumont to talk to Mr. Knepper about grievances?

A. I believe so.

Q. All right, sir, you wouldn't have this Court believe that because you personally, as financial secretary, had never been to Mr. Knepper's office to discuss grievances, that no one in authority in the Union has been to that office, would you?

A. To discuss formal grievances, no, sir.

Q. All right, sir, as a matter of fact, Mr. Sanhueza, you, yourself have been in the Beaumont office of this employer to discuss the administration of this very labor contract, have you not?

A. Once, sir.

Q. And what gentleman did you meet with?

A. Mr. Shanaghan.

Q. And again, that Mr. Shanaghan is the personnel supervisor?

A. Yes, sir.

Q. And he works with Mr. Knepper here in Beaumont?

A. Yes, sir.

[248] Q. Mr. Sanhueza, it is a fact, isn't it, that not only have you been here personally to talk to the company

officials, but you have mailed in many grievances to Mr. Knepper in the Beaumont office?

A. Yes, sir.

Q. You, yourself, personally have forwarded the formal, written grievance at the fifth level to Mr. Knepper in Beaumont, Texas?

A. Yes, sir.

Q. You have done it at least eight times under this particular labor contract, have you not?

A. Yes, sir.

Q. Now I believe you told the Court that they had some quarterly grievance meetings in New York City that you attended, do you remember those questions from Mr. Dixie?

A. Yes, sir.

Q. You talked about whether or not they drew up a report or minutes and you had some discussion about the notes of those meetings, correct?

A. Yes, sir.

Q. Mr. Sanhueza, I ask you if it is not a fact and don't you know that those meetings were discontinued over a year ago?

[249] A. Yes, sir.

Q. And don't you know they were discontinued at the request of the defendant in this case, the Union in this case?

A. Yes, sir.

Q. And since the time they were discontinued over a year ago, since that time the grievance machinery has been handled as Mr. Knepper testified to, with the fifth level in Beaumont, Texas? There has been no change in that procedure, has there?

A. It followed all the steps, sir.

Q. And the fifth step provides in Beaumont, Texas, on the face of the contract, does it not?

A. Yes, we mail the final form to Mr. Knepper.

Q. Or Mr. Perrio or Mr. Weeks or someone else could bring it in and discuss it, correct?

A. Yes, sir.

Q. Now you know this labor contract doesn't say where you have to arbitrate, does it?

A. Yes, sir.

Q. It does not say where you have to arbitrate, is that correct?

[250] A. That's correct, yes, sir.

Q. All right, it doesn't say where you have the first four subordinate levels of grievance hearings, does it?

A. No.

Q. But the last grievance level before arbitration, that's where we have the nut-cracking, isn't it, Mr. Sanhueza, that is, the go or no-go, is it not?

A. Yes, sir.

Q. And you know of your own knowledge that this labor contract fixed the definite location for that meeting in Beaumont, Texas, does it not, the fifth level?

The Court: I think this is argument, you have been over it once.

By Mr. Hambright:

Q. Mr. Sanhueza, you testified you sent in at least eight of these grievances to Mr. Knepper. You never sent one to anybody else, did you?

A. No, I did not.

Q. Now in regard to the Master's dismissal or an employee aboard ship, you told the judge—[251] you told this Court that this could happen anywhere, correct?

A. Yes, sir.

Q. That is not final, Mr. Sanhueza?

A. No, it is not.

Q. You know that a Master doesn't have the authority to discharge a man from the employment of this employer?

A. No, sir.

Q. And if he should dismiss a man aboard ship this is appealable to the employer, is it not?

A. Yes, sir, it is.

Q. And when so appealed it goes to Mr. Knepper in Beaumont, Texas, does it not?

A. Yes, sir.

Q. Now you spoke of the International Union organization in the various sections and districts. You weren't telling this Court that the International Union of the OCAW has no interest in these crews on these vessels down here in the harbor at Beaumont, were you?

A. Will you repeat that, sir?

Q. Mr. Sanhueza, do you know a gentleman named Lefty Haven?

[252] A. Yes, sir, I do.

Q. Is he present today in the courtroom?

A. Yes, sir, he is.

Q. Is he an International representative of the OCAW?

A. Yes, sir.

Q. Was he served with process in this very lawsuit?

A. Yes, sir.

Q. And he is a resident of Port Arthur, Jefferson County, Texas, is he not?

A. I believe so.

Q. And you know of your own knowledge that that gentleman has been aboard these tankers in the Port of Beaumont talking to the employees and working on labor relations, do you not?

A. No, sir.

Q. I will ask you whether or not Mr. Perrio, the President of the Union, has not informed you that Mr. Haven has been aboard those vessels in Beaumont?

A. I believe during the strike, sir.

Q. So when you tell the Court you don't know it, you are saying you have no personal knowledge, [253] but you have heard from Union officers that he has been there?

A. Yes, sir.

Q. Mr. Sanhueza, when you spoke to the Court about these ships' locations and the computations you made of travel time and port time in Beaumont, you weren't plotting in there the river time, were you?

A. No, sir.

Q. So that if a ship came to the bar and then passed through Sabine Pass and then came up to Port Arthur, and on through mid-county and up to Beaumont, it would actually be in the Neches River some appreciable amount of time, would it not?

A. Approximately twelve hours or so.

Q. And this would be true in Houston, or other ports where there are access places a ship must navigate, is this correct?

A. Yes, sir.

Mr. Hambright: I pass the witness.

The Court: Anything further, Mr. Dixie?

[254] **REDIRECT EXAMINATION**

By Mr. Dixie:

Q. How have you been settling your grievance discussions since you discontinued your quarterly meetings?

A. By mail, sir.

Q. By mail?

A. Yes, sir.

Mr. Dixie: I pass the witness.

RECROSS EXAMINATION

By Mr. Hambright:

Q. Did I understand you to say by the officers?

A. By mail.

Mr. Hambright: I am sorry, I thought you said by officers.

The Court: By mail.

The Witness: By mail.

The Court: All right.

By Mr. Hambright:

Q. And this mail has been addressed to Mr. Knepper in Beaumont, Texas, is that correct?

A. Yes, sir.

[255] Mr. Hambright: That's all.

The Court: All right, sir, you may step down.

Mr. Dixie: Just one more short witness, Your Honor.

Mr. Perrio.

JOHN PERRIO, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

By Mr. Dixie:

Q. Your name is what?

A. John Perrio.

Q. And how long have you been working for Mobil Oil Company?

A. Sixteen years.

Q. What capacity?

A. Cook and steward.

Q. Where do you live?

A. I live in Houston, Texas.

Q. What position do you occupy with the Union?

A. President.

[256] Q. All right, now, Mr. Perrio, we have been over everything in this case and I want to ask you to tell the Court briefly what is the nature of your dealings with Mr. Knepper here in Beaumont, in carrying out these Union contracts?

A. I go aboard ship, the men come to me with a beef, I try to settle the beef, generally once a week with Mr. Knepper, sometimes by phone and the majority of the time by phone, informal, always informal, and if it is not settled there, then a grievance is gotten by the man up north, generally on a ship by Mr. Sanhueza, then it is mailed, sent to me, I sign it, Mr. Sanhueza mails it to Mr. Knepper.

Q. After a grievance is filed and becomes a formal grievance instead of what you just called a beef?

A. It is a beef.

Q. Do you have hearings of any kind in Beaumont to settle those grievances?

A. At times there may be informal meetings.

Q. And how often would that happen?

A. Oh, I would say maybe once a week, maybe once [257] every three weeks.

Q. Would you tell us how a majority of the grievances are disposed of?

A. They are—when the grievance is sent to the company by mail then we have a quarterly meeting, we act by quarterly meetings and we have all of the grievances that we do have then.

Q. It has already been brought out that all of your quarterly meetings have been held in New York, is that right?

A. That's correct.

Q. After you discontinued your quarterly meetings how have you gone about settling your grievances?

A. Through the mail.

Mr. Dixie: I pass the witness.

CROSS EXAMINATION

By Mr. Hambright:

Q. Mr. Perrio, did I hear you say that you go aboard the ship yourself and receive grievances from the men?

A. Beefs, not grievances written.

Q. Well, do these beefs have to do with the [258] rights of the seamen under the collective bargaining agreement?

A. That's right.

Q. And you go and talk to Mr. Knepper about this about once a week, you said?

A. Just about, sometimes.

Q. Is it to the Union's best interest to get those matters settled at the first meeting with Mr. Knepper?

A. I is best to be done aboard ship with the Master, then Mr. Knepper.

Q. Assuming that it wasn't settled by the Master and it got to be a beef, is it to the Union's best interest and the best interest of the employee to get it settled when you go visit Mr. Knepper, isn't that right?

A. That would be right.

Q. Sometimes you think it is the best interest of the company also, do you not?

A. I would think so.

Q. As a matter of fact, sometimes you even state to Mr. Knepper that it would be to the best interest of the company if he made a bargain with [259] them and settled their controversy. You have said that, have you not?

A. I may have.

Q. And when you are out there talking to Mr. Knepper once a week about these beefs, what is your bible, what documents do you refer to?

A. The contract.

Q. The labor contract, that is marked Plaintiff's Exhibit 1 in this lawsuit, is that it?

A. That's right.

Q. That contract has over one hundred numbered paragraphs in it, does it not, Mr. Perrio?

A. Approximately.

Q. And you have some members of the Union that reside in the State of Texas, is that correct?

A. That is right.

Q. Over one hundred of them?

A. More or less.

Q. And then you—well, you have got more that live in Texas than anywhere else, have you not?

A. No, I wouldn't say that.

Q. You have got more that live in Texas than any other single state, do you not?

A. All right, yes.

[260] Q. You will go with me that far?

A. Yes.

Q. Mr. Perrio, as President of this Union I will ask you whether or not membership in your Union is voluntary in the State of Texas?

A. It is.

Q. Sir?

A. I say it is voluntary.

Q. Did you say it is?

A. It is.

Q. All right, sir, what do you mean by the statement to me that Union membership is voluntary in the State of Texas?

A. What do I mean by this?

Q. Yes.

A. I cannot go to the company and request that they be discharged.

Q. And why do you say that, Mr. Perrio?

A. Sir?

Q. Why can you not go to the company and insist on this discharge?

A. Well, I would say it would be a violation of the Texas Right to Work Law.

[261] Q. Have you known that of your own knowledge, haven't you?

A. No, we didn't know this.

Q. You found it out later?

A. When Mr. Knepper told us about it and we didn't know it was a violation then.

Q. All right, as a matter of fact you heard Mr. Sanhueza testify that all the employees are in the Union or else get in the Union within a reasonable time. You heard that, didn't you?

A. That's right.

Q. So that if all of them are in the Union or get there eventually, you really have no cause to ask the company to fire anybody, do you?

A. No, we would have no problem.

Q. And when these people do join the Union you don't know whether they are operating under this threat, this notice that was sent out by the Union, whether they really want to get in or not, do you?

A. Well, the ship's representative aboard ship is the man who contacts them before I do and the Union officers themselves would not be involved.

Q. I show you Exhibit 10, and I will call your [262] attention to the part that's got the blocks drawn around it, is that the Union notice that you put up on the bulletin boards?

A. This is the Union notice but we do not put it on the bulletin boards.

Q. All right, sir. Well, it is a notice that you published to allyour members?

A. That's right.

Q. You gave it wide circulation, did you not?

A. This is true.

Q. And the part where the blocks are around it says we intend to exercise our right to have the employment of any unlicensed seaman terminated who does not join or pay dues to the Union, did you write that?

A. No, I did not.

Q. But you endorse it as being the message, don't you?

A. Yes, sir, I do.

Q. Does that say anything about exclusion of Texas employees, Mr. Perrio?

A. It does not.

Q. Mr. Perrio, if it is testified that that [263] notice has been placed aboard, on the bulletin board aboard the vessels belonging to this employer manned by employees that are in your Union, you would not deny that, would you?

A. No, I would not.

Q. You have testified that you didn't put it there yourself, is that right?

A. This is true.

Q. Mr. Perrio, in this lawsuit you did receive service and notice of the case, did you not?

A. Yes, sir, I did.

Q. Was that delivered to you by the United States Marshal in your office in Beaumont, Texas?

A. Yes, sir, it was.

Mr. Hambright: I pass the witness.

The Court: Anything further?

Mr. Dixie: No more questions, Your Honor. The Defendant will rest.

The Court: All right, Mr. Perrio, you may step down.

Do you have anything further, Mr. Hambright?

[264] Mr. Hambright: We have a very short, very short rebuttal which I think we can cover very quickly.

The Court: All right.

I believe we will wait until after lunch.

Mr. Hambright: Yes, sir.

The Court: We are going to stand in recess until fifteen minutes until 2:00 o'clock. We will stand in recess until that time.

The Marshal: Everyone rise.

(Reporter's Note: Whereupon the Noon recess was taken and court resumed at 1:45 P.M.)

[265] AFTERNOON SESSION

The Court: Please be seated. We are ready to proceed, Mr. Hambright.

Mr. Hambright: If it please the Court, the defendant just before noon announced that they rested. The plaintiff would now likewise rest and ask if the Court would receive a closing statement?

The Court: All right, you may proceed with your summation.

Mr. Hambright: Thank you.

CLOSING ARGUMENTS

By Mr. Hambright: Your honor, the position of the plaintiff in this case is that regardless of where this labor contract may have been signed by the parties that part of it in violation of the Texas Public Policy cannot properly be enforced in the State of Texas. The parties themselves recognize in their labor contract that part [266] of it may be invalid. They have got their savings clause or validity clause in there which talks about what might happen if a Court should determine that part of the contract is void. That's on Section 11, page 6.

United States Supreme Court had something to say about these savings clauses. In the case of Rockaway News it considered one of these savings clauses in a labor contract situation and Justice Jackson, writing for the Court, approved the savings clause and he recognized the need for them and I would like to read one sentence which he wrote in reference to these validity clauses. He said, "The parties who could not foresee how some of the provisions of the statute would be interpreted proposed to go as far toward Union security as they are allowed to go and this is their right, but they proposed to go no further [267] and that is their duty."

We would submit to Your Honor that in this case the exact same thing happened. These parties proposed to go as far toward Union security as they had a right to go but they recognized that they had a duty not to step beyond that line and that is why they wrote the validity clause and that's why they agreed to meet and talk some more if the Court held any part of the contract invalid.

Now in our case, the Court has heard evidence which we submit establishes beyond any question of doubt that this labor contract is applied in the State of Texas. The Court is already aware of the disjunctive provision of law which states that if it is executed or applied here then the Texas law may control. We submit that it is applied here and

without rehashing two days of testimony we only have to recall the testi [268] mony of the Union president, Mr. Perrio. He tells us that once a week he goes to Mr. Knepper's office, they talk, they solve problems, and he says their bible is the labor contract. We submit that these transactions occurring in Beaumont, Jefferson County, Texas, affecting every member of this unit directly under the labor contract before Your Honor transcends all other transactions and brings it down into one principal point of contact between this plaintiff and these unions because at that particular stage the labor contract is being applied by both sides as Mr. Perrio said, it is to the best interest of the Union and he has often stated it is to the best interest of the company because they know that what they do at that meeting is going to be the law of the contract between the parties and wages, hours, overtime, vacations, scheduling, seniority, what they eat, what they do aboard ship, [269] and he knows the Court has been advised by these witnesses that Mr. Knepper's decisions flow back down the line of command. If he settled it in favor of the Union why Mr. Papich tells the Masters aboard the vessels and thereafter they administer the labor contract in keeping with that decision. If the rule is in favor of the company or if Mr. Knepper or Mr. Perrio makes a compromise ruling, then the matter is settled to the contrary and we do know that out of the 29 specific formal grievances all but four of them were settled right here in Beaumont, Jefferson County, Texas. Only four out of that particular group of twenty-nine had to be arbitrated.

Now for convenience of the parties they did that in New York City, but we do not think this is controlling because the decisions were made here and 25 out of 29 were so concluded in beaumont. We do not think that this [270] grievance procedure is controlling and standing alone because there is a lot of independent evidence before Your Honor to show this contract receives its application in the State of Texas, but that each of these points which we will note in

passing is enough standing alone to support findings of this Court that this labor contract is being applied in Texas, every day of the year it is being applied here. For instance, the proof shows that all employees of the plaintiff are in Texas frequently and repetitively.

Mr. Sanhereza said he has been doing it for fifteen years. Moreover, the President of the Union, Mr. Perrio, is a Texas citizen. He has got a business office in Beaumont, Texas, where he was served by the Marshal in this case. Mr. Weeks is the Vice President of the Union, and he is a citizen of San Augustine, Texas. The proof shows without dispute that sixty [271] percent of the new employees hired in the last two years were hired in Beaumont, Texas. The point of hiring I would like to discuss, if I could digress a moment and advise the Court of one very recent decision made by government agency on this point of hiring. On March 30th, 1972, the NLRB trial examiner in Houston, Texas issued a decision in a labor case involving a seafaring International Union. The SIU had a strict rule that you have to belong to the Union or you can't get a job aboard a ship. They have a hiring hall in Houston, Texas, they have got them all over the country, and in this particular case a seaman not a member of the Union was denied employment repeatedly aboard a ship so he filed a charge to the NLRB. The NLRB trial examiner held that it was an unfair labor practice for the Union to deny him employment on this ship and in the [272] course of writing his opinion he had occasion to make this statement concerning Texas law: "Although in certain states it is lawful to require maintenance of Union membership or payment of equivalent dues or charges by employees within a fixed period of time after entering employment, through express provisions to that effect in a collective agreement this would not be true in a so-called right-to-work state such as Texas, where under no circumstances may the requirement of Union membership or non-membership be made a condition of the employment or continued employment."

I would advise the Court that that case went on to talk about the fact that there were hundreds of labor contracts involving the SIU members. They declared this practice illegal, it is of no moment to the National Labor Relations Board that this is a seafaring employee, and once [273] he gets outside the ten-mile limit he may be on the high seas. The important thing to these Government people that look at this is that the point of contact, the hiring point was in the State of Texas. I would advise the Court that that case is on appeal to the NLRB. I would further advise that I have spoken with the chief Government lawyer in Houston about that case and he says the Union is complaining about the way they posted the notice to give this effect of this ruling to the membership and, for what it may be worth to Your Honor, he tells me that the substantive rule as to the point of contact is long-standing with the NLRB, and he recognizes and appreciates thought that that might be threatened on appeal. In any event, the point of it is, the point where a man is hired is recognized to be an important factor and in this particular case sixty percent of those people [274] are hired in Beaumont, Texas.

Now in addition to the proof, the proof shows that all of the terminations for cause have to be appealed to Beaumont, Texas, and that there is a right to appeal every one of them. So again, I think that this shows application of the labor contract within the State of Texas and nowhere else. The Texas unemployment insurance covers one hundred percent of these employees. There is no exception to that, regardless of what address he might turn in on a company record. The evidence shows that the employer's business headquarters is located in Beaumont, Texas, and I use the term employer, Your Honor, because Mr. Dixie repeatedly talked about this mammoth New York corporation known as Mobil Oil, but Mobil Oil also owns the refinery here and it owns hundreds of facilities all over the United States [275] and all over the world

and I venture to say that there must be hundreds of labor contracts, but in the labor contract at bar the employer is defined as the Gulf Coast, East Coast operations, a subdivision operating entity of Mobil, and, therefore, that organization's headquarters are in Beaumont, that what they may do for some of these meetings, like go to New York or elsewhere, is a mutual acquiesence of the parties, not required by their contract.

The Court has heard evidence that literally millions of dollars change hands under this labor contract. Millions of dollars in vacation checks and allotments is disbursed from Texas. The vacation checks all come from Beaumont, and the allotment checks all come from Dallas. In addition, the Court has heard that there is over a million dollars in United States [276] income tax on these payments that is computed in Texas, and paid to the Government in Texas, and I think it is a reasonable inference to state that any dispute or adjustment or any question arising there would likewise be handled in Texas, where the money is handled. The Court has heard testimony about certain unfair labor practice cases filed in Houston, Texas, by Mr. Chris Dixie's law firm, of two or three years ago. This is in evidence and it relates to a joint claim of some half a dozen or more employees asserting that the company has wrongfully acted in regard to their vacation benefits. If it please the Court, we would show that these New York NLRB proceedings that Mr. Dixie spoke of concerns either the elections among the employees whether they wanted a Union or the change of names of the Unions a few years later and both of those are non- [277] controversial matters before the labor board in the sense that the parties are not at each other's throat. You turn from that and you find that when the Union has a complaint about the way the company is treating its employees and they want to take them to court but the only time they have done that was two years ago or whatever date is on that, 1969, and they did it in Houston, Texas, in the 23rd region of the NLRB. We think

that this is evidence supporting our contention that this labor contract is in fact applied within the State of Texas. I might digress one more time and say that this NLRB proceedings and the other ones to which I referred in no sense is a statement to this Court that the NLRB has any type of exclusive jurisdiction in this case and the Court has already squarely ruled on that about six months ago when the defendants asked that this case be dismissed as coming within the [278] jurisdiction of the NLRB. At that time we submitted to this Court memorandum of authorities which quotes the United States Supreme Court cases establishing without any shred of doubt that this Court has full concurrent jurisdiction to decide this case. This is the United States Supreme Court and not any other court which has made this statement.

The labor contract also was shown, was actually signed in Texas for the purpose of putting it in force among the employees. I don't want to repeat all that for the Court, I suffice it to say that they give it some attention here, they went through this later transaction of typing it up and correcting it and signing it and I think that is evidence that they intended to apply it in the State of Texas.

Another important factor, without any controversy, is a matter of dues check-off. The proof shows that all [279] of the dues check-offs take place in Beaumont, Texas on a form agreed to by the Union in writing, addressed to this company, this employer at Beaumont, Texas. They are computed here, the amount is then sent to Dallas to get the money from a particular organization there that disburses some of the payments and from there it goes to Mr. Sanhereza up in New York, and he testified that when there is an error he adjusts it in Beaumont, Texas, through the mail, on the phone, but this is where he comes to get the extra money if it is short. This is without any controversy. The proof also shows that this employer has been physically located with its headquarters

in Beaumont, Texas for ten years. This is nothing that happened in any fashion connected with this lawsuit. The proof shows without any dispute [280] that the budgeting operation is conducted in Beaumont by various employees working for Mr. Knepper. The payroll, all the payroll records are here in Beaumont, and are administered here. All the personnel records on the individual employees are kept here, no matter where they may live. The orders to the Masters of the ships originate in Beaumont, and Captain Papich carries out the instructions of Mr. Knepper and relays that to the ship's Master.

The proof shows that the newspaper which is read by all of the employees and put out by the company entitled "Mobil Mariner," is actually printed in Beaumont, Texas, and distributed from Beaumont, and written in Beaumont. The employees booklet entitled "Welcome Aboard," which tells them a little bit about ship life, was written in Beaumont, Texas, is printed here and is distributed to them from Beau- [281] mont, and inside that book it tells the man that while you are our employee your address will be Beaumont, Texas. We, therefore, submit to Your Honor that the combination of these circumstances certainly establishes that the labor contract is administered in Texas and, as I have mentioned, we are convinced that anyone or two of these circumstances would be enough standing alone to demonstrate that this labor contract is administered in the State of Texas. It doesn't require all I have mentioned here, twenty odd things. It doesn't require that. Once you show that this is where most of the people are hired and where all of them have to be fired if they are fired and there is a final decision made, once you show that their money is coming from any place they could go anywhere to talk about this, so we submit to Your Honor that this contract does [282] receive its application in the State of Texas.

In conclusion, I would urge the Court that we think we

have proved enough to have this clause deleted from the labor contract. However, if the Court is not persuaded that we are correct on that point then we submit that certainly we have proven enough to show that the cause should be held to be of no force and effect as to residents of the State of Texas.

Our complaint contains a prayer for general relief and in such alternative relief as the Court may deem proper.

Thank you, Your Honor.

THE COURT: Mr. Dixie?

CLOSING ARGUMENTS

By Mr. Dixie:

If the Court please, this is a very important case to organized labor because it does concern money, the [283] purse string, and the question of Union security. These great working conditions of which we are very proud come from the fact that the Unions have money to bargain and to administer contracts and to exhibit strength to the employer. So that is the importance of the case. I thought very seriously of asking this Court to go all the way to decide what is and what is not legal under the picture that you have before you and to draw the line, but I come to the conclusion that that was not very wise for two reasons. One of them is that I don't believe Your Honor can carve with sufficient care and accuracy on this fact situation because you don't have enough evidence before you to decide who should and who should not be subject to the Union security clause.

The second reason I came to the conclusion not to ask the Court to go [284] all the way is the fact that the contract is about to run out and the matter will be moot and unless the declaratory judgment is used in improper ways it will be a futile exercise here for this Court to undertake

to render a final definitive judgment that means something. In this connection, I refer the Court to a labor case, "General Electric Company. *v.* International Union of Electrical Workers, 395 Fed. 2d 891." A suit to test the validity of the labor contract. The trial court ruled and on appeal during the appeal the contract expired, whereupon the Court of Appeals remanded the case to the District Court with the instructions to dismiss the cause, it had become moot. Declaratory judgment, a peculiar animal, it is about twenty-five years old and it has some excellent uses and it also has some potential misuses, and [285] it would be a misuse of declaratory judgment if the plaintiffs in this case is hoping to get some kind of a ruling from this Court, in this case which will control or affect the bargaining for a new contract which is now going on and here I must digress to say to Your Honor that it has been my experience in these labor cases that they are sometimes something behind the actual litigation which the Court sees. We have here in this case, apparently, a company and a Union that get along pretty well. They have been doing business since 1942. I think they have had a strike in 1969, but they settled it. The contract provides nice wages and working conditions, they settled their grievances very nicely, according to the testimony, and yet we have here a situation in which the company's principal witness testified that at [286] no time before this trial did the parties discuss anything except the total invalidity of the contract. At no time did the parties discuss the possibility of making the Union security clause effective only as to members and at no time was there any discussion at the bargaining table between the parties to find some other alternative.

Now what does that tell the Court as to what the plaintiff probably hopes to accomplish here? The plaintiff probably hopes to accomplish a ruling from the Court that will have the effect on the bargaining of the next contract and that I will say for both parties, including my client, is a very

poor way to do business. These parties should have discussed and tried to work out this problem before other than the company's contention that the clause is completely [287] invalid as to everybody. Now that is the only actual dispute that ever existed before we got here. You have got here a contract that is about to expire. Nobody has been fired under it, there has been no request that anybody be fired under it. Mobil has no liability of any kind or character and one would think under these circumstances that there is very little that Humble—I mean that Mobil can hope to accomplish other than the possibility of controlling the future bargaining. Well, on this point I know the Court knows, and I am going to discuss it fully as much as the Court will permit, that it is not within the jurisdiction of any court to prescribe what should be bargained at the bargaining table. Maybe what is bargained at the bargaining table is illegal and the Court can strike it down but I don't believe the Court [288] wishes to go into the bargaining room to try to control what the parties may do.

Mr. Hambright: May it please the Court, I ask forgiveness for this interruption but Mr. Dixie, for the fifth time, has attacked the motive of these parties in a manner not supported by the evidence and while I realize that this is not a jury trial, I do wish the Court to note that our objection for his continual reference to these, what he claims are improper motives and that we are trying to get this Court to do something improper because of some motive to take some unfair advantage of it, this is not in evidence before the Court, we disclaim it one hundred percent.

The Court: The objection will be overruled. The Court will comment that I don't think Mr. Dixie is intending to reflect upon the motives of [289] the defendant other than to show advocacy which certainly he is entitled to demonstrate and resort to as much as he thinks is necessary or

is fitting. I would also point out that counsel has a right to make a response and you may then make a response, even assuming that was the motive of the defendant to control the future negotiations I am not too sure that you don't have a right to do that, but that in itself is not advocacy so the Court is not so naive as to not be able to say they are future considerations that counsel has in mind. I am sure that the plaintiffs, the defendant would like to delay the matter for the very reason that the plaintiffs would like to accelerate the matter.

All right, I don't think there is anything for anybody to get excited about is what the Court is really trying to say.

[290] By Mr. Dixie: We do business with a local oil company and we get along pretty good and I don't intend for counsel—

The Court: I think that is pretty obvious and perhaps the Court wonders why the matter has risen in the first place, but go ahead.

By Mr. Dixie: I say and I said in the beginning that I don't feel that the Court can carve on this case with a sharp enough knife to do a satisfactory job for the parties and this is because both in the field of collective bargaining, at the bargaining table and before the National Labor Relations Board, Your Honor, we are accustomed to real sharp pencils and very, very delicate, nice adjustments to settle the differences between the parties and get a contract and get industrial peace and everybody go on and make money.

[291] The Court: You might give the Court an illustration of what would be an example of the proper niceties or minuteness in the way of decision in this case. I would be interested in having counsel's opinion.

Mr. Dixie: All right, let me go first to another view, I mean another area. You might be aware, Your Honor, that out of these plants it is very customary for bargaining unit

employees to promote up and work as temporary foremen and the question arose what is the status of a man that works part time as a foreman and part time as a bargaining agreement employee, and that was a very important distinction because a bargaining unit employee is entitled to the protection of the act but the supervisor is not. Well, the Labor Board wrestled with that question for a few years and they came down with a ruling that if a man works [292] one day a week he is a supervisor that week and if he works less than that he is not. Now that is what I call a real class adjustment by an agency created by Congress to settle some of these problems.

The Court: A decision of that type, is that beneficial to both the Union and the company?

Mr. Dixie: Certainly, Your Honor, that type of ruling clarifies the situation, it lets everybody know where he stands and while the Union would like to have the supervisors in the Union, why it can't and at least it knows that the one day a week don't ask that man not to cross the picket line and if it is less than one day a week you are entitled to speak for him.

The Court: As a matter of information, how did it help the parties for the National Labor Relations [293] Board to delay in making the decision?

Mr. Dixie: I don't think the Board delayed that decision.

The Court: I thought you told me after several years of deliberating.

Mr. Dixie: No, I didn't mean to say that. They probably had a case or two wrestling with the problem before they came out with a conclusion that satisfied them. I don't think there was any unusual delay.

The Court: The only criticism that the Court would have would be—it wouldn't be criticism, it would be more observation, of the National Labor Relations Board, that is

pretty slow, pretty dilatory in their operations and procedures.

Mr. Dixie: Well, that may be but if that agency is there and as we will see that it has passed on several questions than this one differently from what they say, from what they are asking Your Honor to do, but the [294] point is you invited me to say what I think should be done if I were doing it, if I had my magic wand I would put these parties down and I would say to the Union, your offer of Union security will apply to everybody who works less than thirty percent of his time in the State of Texas and the employer would come back at you with ten percent of the time and maybe you can come up with some kind of a clause that is legal. That is just one approach that could be made that has not been made. That is the kind of approach that is the genius of collective bargaining and the genius of these expert labor agencies would not particularly have the fear of a federal court, especially where the parties haven't even talked about the subject yet and the first time it is coming up is defense counsel bringing it up on summation. That's the [295] type of thing that should have been handled at the bargaining table and should not be handled at the bargaining table without, respectfully submitting without the intervention of this Court, because your judgment will have no effect on the collective bargaining process I submit except in this case. Now I said I want to say this right now. I think we can dispose of this argument that people that the Union security clause should be invalidated in its entirety because the Beaumont operation is here and the grievances settled here and the thing is applied in Texas, because all we have to do is go to the United States Steel Corporation, which has headquarters in Pittsburgh, where they administer their contracts up there, and we will just say that the home office is here, the center of activity is here and we are going to sign a contract here in Pennsylvania and everybody in Texas has got [296] to belong to the Union whether they want to or not, so we have got a big steel mill over here

in Houston, three thousand men, and everybody would have to join whether he wanted to or not. I think it will help the Court to check each one of these suggestions by just turning it around. Would you be willing to force Texas employees into the Union if all of these operations were located in New York. Obviously you would not. I am here to suggest that the most logical test of what's legal or illegal is a question of where is the work first born, and I think that's where the labor board has postured itself pretty much in the cases that it has had occasions to consider. There is a case called Northland Greyhound, 80 NLRB No. 60, 23 NLRB 1074. It concerns bus drivers, Greyhound bus drivers. They go from state to state and in one respect they are similar to these people who go from [297] port to port. That case, the Board had to decide at what state it would and what state it would not hold Union shop elections and who would vote, and I would like to briefly quote from the opinion of the Board: "The employer in the instant case is directly engaged in the field of transportation and the nature of its operation is such that some of its employees, particularly its drivers, continually travel between states which either permit without prescription regularly or prohibit Union shop agreements. It, therefore, becomes necessary to determine initially which state law is applicable and then in view of the language of 14b whether the particular state law or the national law is prominent. In resolving the question as to the applicable state law such factors as the residency of the employees, the places where they were hired, their headquarters, the [298] proportions of working time spent in the various states and with regard to the drivers there might have been given consideration in view of all the circumstances involved we are persuaded that the headquarters of the employees provides the best criteria because they represent the local point of the employment relation. The headquarters or where the employees report to work, receive their instructions and are paid their salaries. It is, therefore, in the states which they have their

headquarters that the provisions of any agreement between the men and the employer regarding the employees involved will be effectuated.

In view of the fact that most essential matters with respect to the employment relationship will be dealt with in the state where the employees have their headquarters, we believe that that application of this test could determine which state law shall control [299] will result in the least amount of extra-territorial effect being given to the laws of one state as against those of another." So, under the circumstances of those bus drivers the labor board disregarded residence in place of employment and all these things where the contract was administered and selected headquarters, that is where the man reported to work where he got his instructions and where he got his pay. All right, that is on that case. There was a later case called Western Electric, 84 NLRB 1019. In that case Western Electric had a group of installation workers that it would send around the country to work while in one state, while in another state, the head office of the company was in New York. The Union said it was in New York, let's make it applicable to everybody because it is a New York contract, the Board said no. The [300] Board rejected exactly what they are claiming in this case. They want the Beaumont office to control everything but the Board has refused that. In that case the Board adopted the job site test. That is, each employee is considered to be subject to the law of the state where he reports to work, receives his instructions and his pay, his wages. Now no doubt other variations will arise, depending on the fact situation. This is the only case that I know of, Your Honor, where such a predominant amount of time was spent on the high seas where the work is performed, where no state law applies, and I believe from my standpoint that this fact situation must be the best one that will ever arise from the Union standpoint to litigate it to a conclusion as to just what should be because I really think unless we are imbued with a policy of the right-to-work law, unless we

are unduly weighed [301] by that, that the evidence shows as it does here the twenty percent or less of the hiring of these employees is actually spent in Texas, and all that on ship board, not any of it on Texas soil, I think the chances are fairly decent that the Court will finally hold that under the circumstances of this case we hold that Texas law does not apply to everybody. But, in any case, the resident requirement to which the defendant, the plaintiff has run during the trial, is a test that has been rejected by the Labor Boards and has not been adopted by anyone else that I know of.

I know that I impose on the Court, the time is getting lengthy, but I ask your indulgence.

The declaratory judgment Act was amended in 1948 to add the word "may," m-a-y. The statute now reads that the Court may declare the rights of parties and the legislative history [302] shows that the Congress deliberately intended to make it discretionary, deliberately intended to make it discretionary with the Court whether or not to render declaratory judgment in any particular case. That history is set out in volumes 6a of Moore on Federal Procedure, Par. 5708.

One basis where the Court had declined to render a declaratory judgment is where declaratory relief will not settle the whole controversy. It would certainly be futile for this Court to say I find that it is illegal in whole or illegal in part, illegal in part and legal in part, and I find that much and I will let it go. I think it would be improper for the Court to make any judgment which might affect the future negotiations of the parties and so the real controversy is not going to be settled by this litigation. Plaintiffs are trying [303] to extract an opinion in a hard case, for some reason they do not seem to want to go to the Labor Board. Now with all due respect to my distinguished colleagues here, Mr. Nixon has been in office four years and he has appointed a majority of the Labor Board and the

general counsel, and I assure Your Honor the Labor Board is not coddling any Unions this year and I assure the Court that they are giving us rigorous, strict application of the law. Our rights are not one inch more and Mobil's rights will be fully protected in that litigation.

Now I would like to ask if I may go to the blackboard for a moment.

The Court: Yes.

Mr. Dixie: Congress has given us a patchwork, this Court knows the pre-emption doctrine, I know, as well as any Court, because you are located down here where many industrial disputes are. Here we go in the passage [304] of time from negotiations to the execution of a contract to the discharge of an employee. We will say that the execution takes place here, execution of contract.

Now if the Union strikes or bargains for an unlawful security clause, that is a federal case. Its only remedy is for the Mobil Oil to file charges before the Labor Board and the Labor Board will issue a complaint and they will come to this Court and they will get an injunction against the striker for the demand, this Court will not decide the merits of the case, you will only issue an injunction as you have many times to preserve the status quo and keep down the dispute until the Labor Board decides the case. But the Labor Board is the only one that can decide the case. If the Union wins the case before the Labor Board this Court can do no more. So this is pre-empted. But let us say [305] the contract is signed and we go on down here and Joe Blow is coerced, he is coerced because the contract says on its face that it is a Union shop and he doesn't want to join and he is being intimidated in his rights not to join the Union. That charge is exclusively for the Labor Board, not for this Court. Suppose the Union gets the man fired, that charge is exclusively for the Labor Board. So here and here the underlying question in this case must be decided by

the National Labor Relations Board and not by any Court. The only place that the Supreme Court has left open is this right here, Shimmer-Horn (sic) Decision and they left that open not for the benefit of the Federal Court but in deference to the State Court. I will read one sentence of the Shimmer-Horn (sic) case, the Shimmer-Horn (sic) opinion. "As a result of 14b," that is our section here, "there will arise a wide [306] variety of situations preventing problems of the accommodation of federal—of state and federal jurisdiction and the Union security field as noted in Alboma Plywood upheld the right of the state to reinstate with back pay an employee discharged in violation of a state security law. On the other hand, picketing in order to get an employer to execute an agreement to hire all Union labor in violation of a State Union security statute lies exclusively in the federal domain because only with the actual negotiation and execution the type of agreement described by 14b state power begins. State power recognized by 14b begins only with the actual negotiations and execution of the type of agreement which is prohibited. So, counsel in this case cited this morning a ruling by the general counsel that the Union demanded an illegal [307] security clause in a state where it was prohibited. So the general counsel issued a complaint. That is this pre-empted difference right here, and the same thing happened when these parties get up and go to New York tomorrow. If this Union makes one illegal demand on this Union security business all that Mobil Oil has to do is go right down to the Labor Board and file on them and then the agency charged by Congress with the responsibility of making these decisions will make and render a full protection to Mobil, while at the same time rendering a careful decision to the individual facts of this case. Under these circumstances is it too much for the defendant to suggest to Your Honor that the appropriate disposition of this case is to decline declaratory judgment in deference to the other proceedings that exist, especially since [308] this contract is about to run out anyhow. Now there is another point, a very much important point to this case. When you get a breach of contract in this case, in this Court under Section 301, the parties are here because it is a federal contract. It was sponsored and governed by federal law, so diversity of citizenship is not necessary. This Court would have no jurisdiction of a federal labor contract if it were not of Section 301 in the federal question. If that section wasn't there the Court would have to have diversity to hear the case and then you would have to decide it according to state law. But the Section 301 case is decided according to federal law. It is under that doctrine that Your Honor's jurisdiction arises. But let's stop to think. Are you here to decide a question of federal law or are you here to decide under the Shimmer-Horn the [309] peculiarities of the application of the Texas Right-to-Work Law.

I think it is the latter, and here they ask the Court to go further than the Texas Supreme Court has gone. Here is the Supreme Court of Texas in the Marmin (sic) case, I think it is a 1968 case, Judge Norvall, I haven't found Judge Norvall wrong many times. I think he may be one of the best judges that ever sat on the Texas Supreme Court, upon my word. In that case Texas residents rented an airplane in Texas from a Texas corporation to take a round-trip to Colorado and return and while they were in Colorado the plane crashed and Judge Norvall held that the Texas Wrongful Death Statute does not apply to that situation. Well, my goodness, it is hard to imagine a relationship more steep in Texas, one can well imagine that the negligence that caused the airplane to fall occurred in Texas, [307] but the death occurred in Colorado. Now then, here is the first thing that Judge Norvall says. "Admittedly there are two questions involved, the extent of the legislative power and the extension of the legislature and in our opinion we respectfully ask this Court to not consider as a matter of Texas law how far the Texas legislation could go. Please consider how far the Texas legislature did go in this

case. Now what does Judge Norvall say about the second rule? "Unless the intention to have a statute operate beyond the limits of the state or country is clearly expressed or indicated by its language, purpose, subject matter or history, no legislation is presumed to be intended to operate outside the territorial jurisdiction of the state or country hat enacted it. To the contrary, the presumption is that the statute is intended to have no extra[311]territorial effect but to apply only within the territorial jurisdiction of the state or country enacting it and it is generally so construed.

Now then, the Texas Supreme Court stands squarely on the conservative view that Texas statutes are not to be construed to go outside the state to the maximum boundary that the state can go unless the statute shows that intention on its face. The presumption is the other way, that the legislature intended carefully to limit its laws to the territory of the state unless it indicates otherwise. Now that is a question of Texas law, that Your Honor is called upon here to decide, if a declaratory judgment action, you may have that power. The Court can probably say that since you have general jurisdiction under Section 301, you will have jurisdiction to answer that state law question too, [312] but Texas law, I mean Fifth Circuit law is that the fact that you have to decide an undecided state question is another reason why in the exercise of sound discretion declaratory judgment is not appropriate. That is because the Federal Courts should not make the first stab at deciding state law questions unless there is absolutely some reason for it. Another point that I want to urge to the Court is that this case is not really ripe for decision, both in the constitutional sense of a case in controversy and in the discretionary sense under the declaratory judgment statute. Now counsel poohpoohs that idea of the case of controversy but so far we are about to get an advisory opinion from the Court when the only arguments that took place between the parties was that the company wrote us a letter in April, in the spring of 1970, and [313] then just started disregarding the clause

and a year and a half later the Union wrote a letter to its members and the company picked it up and made a federal case out of it.

I think I am not too far out of line to say that that is a pretty weak question of a dispute that is mature enough to take into the Federal Court. I don't think it is a case of controversy, either in the constitutional sense or in the discretionary sense. Parties have to come to a real parting of the ways belly to belly in their dispute before they can come to court and ask for a declaratory judgment. After all, this is a remedy that is provided to supplement all other remedies and is designed to prevent accumulation of liability on the part of one side or the other and it is not to be used lightly with so little conflict and so [314] little damage to the plaintiff and in a bargaining relationship and the Labor Board protects the plaintiff, Mobil Oil, against any damage. I respectfully submit to the Court that in the exercise of sound discretion the case should be dismissed without prejudice. Of course, it would be without prejudice because they will have all of their rights to file on us before the Labor Board but if all of that is wrong then I have to assert my full right as a Texas citizen and speak firmly to this Court that if you have to apply some law you ought not apply Texas law at all. If you have to decide the case you ought not apply Texas law at all because only ten percent of the time of the people is actually spent working in the State of Texas and I think that with ninety percent of it is spent on the high seas and the rest of it in New York and other Union security states. [315] It is a little bit too much Texas pride to run the risk of our courts clear up to the Statue of Liberty in New York and declare that it is going to be defective for work performed up there, but what would the Court think if a Union came in here and tried to force people to join the Union when they have a residency in New York and say that doesn't apply to work in Texas. I don't think the Court would welcome that and I respectfully submit to Your Honor that in this important

case the better part of prudence will not harm the plaintiffs really, but it will relegate the parties first to the bargaining table and then to the Labor Board where they get the full answer to their questions. I thank the Court for your indulgence.

The Court: Mr. Hambright?

Mr. Hambright: Thank you, sir.

[316] **REBUTTAL ARGUMENT**

By Mr. Hambright: If it please the Court, I will make a very brief response to some of those points. Many of them have been disposed of by preliminary rulings of the Court on memorandum of authorities.

First, I would like maybe not in exact order to talk about the pre-emption of power that Mr. Dixie used the blackboard and attempted to state to this Court that this Court had a very narrow field in which it could probably act. We disagree with Mr. Dixie's statement on the law. We assert to the Court that Mr. Dixie is incorrect in his statement of the law. We ask the Court to consider the facts which I state now to be true, that many Unions and many employers have come into Federal Courts under Section 301 of the Taft- [317] Hartley Act seeking declaratory judgments as to what their rights are and it is firmly established that this is possible, this is a right they both have. I am looking at one case here, the first one is the Amalgamated Association of Street & Electric Railroad, railway coach employees, filed 1962, in the United States District Court in Nevada, affirmed by the Ninth Federal Circuit in 1963, where this very thing happened, and in that case the Union sought a declaratory judgment as to what the contract meant and whether part of it was invalid and the Court considered it and rendered a judgment which was affirmed by the Ninth Circuit.

The next one is Coastal West Coast Telephone Company

Union, International Brotherhood of Electrical Workers in 1970, where again there was a declaratory judgment, and in the [318] alternative they were seeking reformation of the labor contract and the Court entertained that and granted relief and in our case the Shimmer-Horn case, many other authorities firmly establish and I hope this Court will conclude that it does have full power and jurisdiction to act in this case without any question whatsoever and we are not here seeking reformation, but only declaratory judgment that a particular class is void. The contract itself provides that when a Court so holds the parties will get together and negotiate for I think a ten-day period or within ten days they will meet. It provides that right in the contract. So at the outset I would like to say without any further authorities on that point that there is no pre-emption whatsoever and that this Court has full power to act in this case. Now he mentioned this Texas case by Judge [319] Norvall in 1960, in regard to alleged extra-territorial effect. As I mentioned this morning, we do not think that case is appropo here because this employer is present within the State of Texas. The employees are presntly here on a continuing basis to some degree and all of the labor relations operations, the decisions of running a labor contract, as Mr. Perrio calls his bible, these decisions are conducted here and I won't go back through that again for Your Honor, but the point I am making is that the parties aren't in Colorado on an airplane, they are right here in Beaumont, Jefferson County, Texas, day after day, month after month. So this Court is not being asked to go into there and decide some new interpretation of the Texas law. I noted that Mr. Dixie did not take issue with the Attorney General of the State of Texas, of which he has [320] already surveyed the Texas Court holdings and told us that the agency's shop clause is invalid.

Mr. Dixie alluded to the fact that the Federal declaratory judgment act states that this Court may render a decision to decide this controversy. I would emphasize to the Court

that in this case the controversy arose when the Union sent out a threatening notice to all of the workers in which it said, and I quote: "We intend to exercise our right to have the employment terminated if you don't join." The Union did not say we may exercise our right, the Union said we intend to exercise our right and within one month, plus or minus, after this thing went out this case was filed, and the fact that they may not have caused anybody to be fired since that time may be explained by the fact, first, they got them all in the [321] Union anyhow, according to the testimony, with the exception of maybe a few new ones that haven't lived out there thirty-one days or some reasonable period. So that might explain why they haven't caused anybody to be fired. Another explanation is this suit has been pending continuously since this letter was issued, with the exception of maybe a month's time to get the case pleaded and filed. So, in any event, we do have a controversy here and we are under no doubt whatsoever that it is a genuine belly-to-belly controversy if that's what Mr. Dixie says is required, because the Union said we intend to exercise our right and the only reason they haven't is because the action has been pending since that time. But I do not accept the position of the Union, and I hope the Court does not accept it, that there is no controversy here. Had this action not been pre [322] sented there is no doubt we would have had many developments from that threatening notice.

Now Mr. Dixie referred to the Northland Greyhound case and the Westinghouse case that came right after it. Those cases were decided in 1948 and 1949 respectively. Those cases were decided by the NLRB under a federal statute which has been repealed by Congress. That statute was repealed twenty years ago. It provided for a special, unusual election-type proceedings to be conducted to see if the employees wanted a Union shop. Back in those days they let the people vote on this. The statute was complex,

no one knew what it meant, Congress repealed it over twenty years ago.

We submit that those cases are not important on the question of some type of test to determine the applicability of 14b of the Taft-Hartley [323] Act and in addition if we are going to look to the NLRB for a test we urge the Court to consider the one in March of 1972, right over here in Houston, where the NLRB trial examiner has ruled that seafaring employees are just as subject to this as anyone else and if they are hired in Houston, Texas, or go abroad they cannot be forced to join the Union, regardless of what they do ten miles out at sea. It is the point of contact with the employers that matters and in this particular case before the Board in Houston they didn't have this long-standing relationship of day-to-day business operations and contact between the parties like we have in Beaumont. This was a hiring hall deal where a man walked in and he says I want to go to sea and he is on a ship, and we submit to Your Honor that our case is infinitely stronger [324] than the case decided by the Board's trial examiner just two or three months ago in Houston. So to the extent we might look to the NLRB for guidance, we say that the NLRB would support fully the abolition of this agency's shop clause from this particular labor contract. Now Mr. Dixie said that there is no way that this Court can do anything that would affect the bargaining relationship except bad, something bad. Collective bargaining is a difficult matter. I cannot conceive of any way we can now, today, predict what course collective bargaining might take. I do know that the labor contract before this Court says if any clause in there is taken out by a Court the parties would get together within ten days to talk about it.

We have heard testimony from one of the witnesses for the plaintiff that the plaintiff was willing to talk [325] about it and will honor that contract commitment.

Mr. Dixie would have this Court to believe that the par-

ties have never talked about this matter except in terms of total invalidity. The proof shows that in January of 1970, Mr. Knepper had a meeting with at least three Union officials when they talked about the invalidity of this clause. The proof shows that there were other informal contracts with them again in April of 1970, the company finally wrote that letter to the Union for the stating that the clause was invalid and that they would use this voluntarily. The proof further shows that for over a year the Union raised no objection to this or at least so far as the record shows there was no occasion to do anything more because there has been no repudiation by the Union of this matter of treatment, and then in July, 1970 comes [326] this threatening letter. The Court knows the history thereafter.

Now Mr. Dixie has also stated that this Court cannot carve a decree. He thinks because this Court hasn't heard enough evidence. We submit to the Court that no carving is involved, no intricate maneuvers so involved. The Court says that this agency shop clause is invalid because of all of the evidence that is in this record. If the Court should so hold it has been stipulated in open Court that the other clause, the maintenance of membership clause stays in there as written, it says that once a man comes in the Union then certain things happen. The Union would have that. It would not require any intricate formula or anything else. On the other hand, if the Court is not persuaded that this contract is being applied in the State of Texas and is being [327] administered here, the Court is well warranted in finding that the agency shop clause is only applicable to Texas employees. I perceive no carving operation or anything else required there. It is the law of Texas, the Court has been advised and the Court has known of the law of Texas, the company is here present within the State of Texas, all of these incidents of employment took place here, and so again, I think that we are—that is, there are some shadows and some imaginary difficulties in regard to telling this Court

that it is not in a position to render a decree that is called for by this evidence.

So again, we are in disagreement with Mr. Dixie on that and upon that note of disagreement I will conclude our summation.

The Court: Gentlemen, I think [328] both sides have given the controversy that is the litigation, about all you can. I don't think either of you have left anything out. It may be, as Mr. Dixie says, that this matter could be better decided by the National Labor Relations Board, or it may be it is something that the State Court should have jurisdiction over, but the fact remains that the suit was filed in this court and the Court has jurisdiction and, of course, we need to keep it, make whatever decision we think should be made under the facts and circumstances and the law applicable.

It would be probably easier for the Court to take the line of least resistance and to say that this is really not a proper case for declaratory judgment action and that the action is being abused in this instance, especially in view of the time element mentioned, when the con [329] tract will expire and also the circumstances pertaining to the controversy. The thing that originated the controversy. It is a little difficult for the Court to see how the plaintiff can claim too much harm when the facts indicate that all of the employees involved are Union members or in the process of becoming Union members or have occupied a status which is satisfactory to the Union, and that would be a line of least resistance to take also. On the other hand, that is a two-bladed knife. If no one is dissatisfied about it the company should not be concerned because the employees apparently are happy being Union members. Or, giving effect to what Mr. Dixie referred to as security clause, I believe, the contract, and Mr. Hambright refers to as the agency shop clause, is that right?

[330] Mr. Hambright: Yes.

The Court: On the other hand, if the Union was satisfied what was the necessity of issuing a letter in the first place if all of them were becoming Union members or complying in accordance with their wishes, in accordance with the Union's wishes? What was the necessity of issuing the letter?

To engage in a little levity, Mr. Dixie, you say that the Court's jurisdiction in these matters is rather limited. I can only say I wish it was more limited than it is.

It seems to me that it is entirely too much hair-splitting and too much play on words and too much lack of real sincerity on the part of both parties in this labor-management problem and controversy. Too much to suit the Court. Maybe you need a Board like the National Labor Relations Board, and I cannot resist the tempta [331] tion to say that as far as I can tell it is a two-pronged sort of situation. If the Unions involved, they have a set of lawyers that seem to be favorable toward the Union. If management is involved the company seems to have a set of lawyers in favor of management, and it is a situation that is really, that really isn't healthy or beneficial to industry or to labor either, in the Court's opinion. I think there should be more sincerity in these matters. Now that's the way it appears to the Court. Maybe I am wrong about it. On the other hand, we would say to be completely facetious, if it was too clear-cut there wouldn't be any occasion for the lawyers to expound and demonstrate their techniques and their knowledge and their ability.

So it is a situation and we are called upon to make a decision. [332] We will make it as fairly and as honestly as we can make it. I will make further observations but I would like to say that I will give counsel until July the 10th to prepare proposed findings of facts and conclusions of law which you feel the Court should enter in this case. The mere fact that the Court has passed on preliminary matter,

on motions to dismiss, does not preclude counsel from further pursuing that request and it may be that the Court will decide that this is not a proper action for declaratory judgment. I don't feel that we will make this decision at this time, but I want to give the case more deliberation and more thought.

Now, it is obvious to the Court that while this contract will expire July 31, the principles set out in the contract will still be facing the parties [333] and if the Court's decision is of any benefit, I can see no reason why we should not make it.

Now obviously, if this was a Texas operation, a Texas contract, Texas performance, Texas law would apply. Now Mr. Dixie hasn't attacked that, and as Mr. Hambright has mentioned, he does not question the Attorney General's decision, that is, the Texas law pertaining to the right to work and this clause in the contract, would be invalid under the Texas law if there is no question about Texas law applying. This is a particularly difficult situation because we can't say without some reservation that Texas law applies to the entire operation. I think we would have to concede under the facts as we mentioned during the trial that this appears to be a New York negotiated contract and one that was con [334] summated in New York, with the exception of some formalities, but it does have a definite New York origin. On the other hand, all of the facts indicate that Texas is involved to a greater degree than any other state in the operation and application of the contract and the question is, is it involved sufficiently in the administration of the contract, the application of the contract, for the Texas law to apply.

I would certainly say that Texas legislature intended the Right-to-Work law to apply to residents of Texas, and it would appear to me that this contract then insofar as the residents of Texas are concerned, that it would be invalid and not have any effect; that is, that particular provision

of it pertaining to membership in the Union or dues to be paid, insofar as Texas residents are concerned. It might, if the factor of termination of [335] employment, the other involvement of the company, if it is sufficiently a Texas operation I can conceivably see how a Court could hold that the entire contract would be affected by Texas law. I am not too sure that it wouldn't be a sound decision and upheld, but it certainly would appear to me that if that was not the case that it should be upheld insofar as the Texas citizens are concerned.

Now these are just observations and they are not a definite ruling or decision on the part of the Court. Are there any questions?

Mr. Dixie: No questions.

Mr. Hambright: No, sir, Your Honor.

The Court: We will stand adjourned.

The Marshal: Everyone rise.

[336] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

OFFICIAL REPORTER'S
CERTIFICATE

I, Jerry T. Bloxom, Official Court Reporter for the District Court of the United States for the Eastern District of Texas, do hereby certify that the above and foregoing 335 pages constitute a true, correct and complete transcript of the testimony and trial proceedings in the above-styled and numbered civil cause.

Witness my official signature in the City of Beaumont, Texas, on this, the 4th day of July, 1972.

JERRY T. BLOXOM
Official Court Reporter
United States District Court,
Eastern District of Texas.

FORM NLRB-501
(2-67)

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Form Approved
Budget Bureau No. 64-R001.13

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 23-CA-3440

Date Filed September 30, 1969

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: Mobil Oil Corporation, Marine Transportation Department

b. Number of Workers Employed: Approx. 300

c. Address of Establishment (Street and number, city, State, and ZIP code): P.O. Box 3444, Beaumont, Texas

d. Employer Representative to Contact: John Knepper, Mgr.

e. Phone No.:

f. Type of Establishment (Factory, mine, wholesaler, etc.): Producer of petroleum products.

g. Identify Principal Product or Service: Petroleum products.

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about September 1, 1969, the above-named Employer has refused to grant vacation benefits to the following named employees because of said employees' membership in and/or activities on behalf of Socony Vacuum Tankermen's Association, Local 8-801, Oil, Chemical & Atomic Workers International Union, AFL-CIO, a labor organization: George Agasto, Robert Arnold, Joe Berrioya, George A. Cadawan, Joe Delaney, Wesley Ensign, Ferico Flores, Rudy Gonzales, David Goodrich, James Henry, Robert Kresky, Venus LeBeef, Billie LaBlanc, Bonnie Patterson, Paul Scitanko, Moses Siregar, James Wickman and James D. Williams.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)
Socony Vacuum Tankermen's Association, Local 8-801, Oil Chemical & Atomic Workers International Union, AFL-Cio

4a. Address (Street and number, city, State, and ZIP code): Room 221, Goodhue Building, Beaumont, Texas 77701

4b. Telephone No.: 883-3853

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
Oil, Chemical & Atomic Workers International Union, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

DIXIE, WOLF & WATSON

By: James R. Watson, Jr. (Signature of representative or person filing charge) — Attorney (Title, if any)

James R. Watson, Jr.

Address 525 Scanlan Bldg., Houston, Tex. 223-4444 (Telephone number) — September 29, 1969 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, [illegible])

UNLICENSED SEAMEN
Gulf-East Coast Operations

State of Residence	Number of Seamen as of June 23, 1972
Texas	123
New York	60
New Jersey	21
Florida	16
Louisiana	13
Maine	10
Rhode Island	10
16 other states and territories having 6 or less each	36
	289

Designated Shipping Port	Number of Seamen as of June 23, 1972
Beaumont, Texas	152
Providence, Rhode Island	30
New York, New York	107
	289

Grievances Presented at the Fifth Level to Gulf-East Coast Operations Management

Date of Grievance	Submitted by	Subject	Grievant	Date of Reply
2-10-72	Perrio	Aluminum pipe lines	Joe D. Wilson	3-23-72
2-10-72	Perrio	Aluminum pipe lines	S. M. Donovan	3-23-72
2-10-72	Perrio	Aluminum pipe lines	Thos. Langan	3-23-72
2-10-72	Perrio	Aluminum pipe lines	W. Hyman	3-23-72
3-12-72	Perrio	Seniority	J. Fair	3-23-72
3-17-72	Nason	Pay status	J. Smith	3-23-72
1-24-72	Weeks	Saturday Work	T. Nason	2- 7-72
12-29-71	Weeks	Sunday Work	P. Fitzgerald	1- 6-72
12- 4-71	Sanhueza	Handling Garbage	B. Zarbano	2- 7-72
11- 4-71 (letter)	Sanhueza	Tank Washing, Sunday	General	11-10-71
7- 2-71	Sanhueza	Sunday Work	Cecil Bell	9-29-71
7- 2-71	Sanhueza	Sunday Work	J. B. Delaney	9-29-71
7- 2-71	Sanhueza	Sunday Work	E. McWhinnie	9-29-71
12- 3-70	Sanhueza	Seniority	S. Paisalong	12-18-70
8-17-70	Perrio	TC for cleaning spill	G. McCarthy	12- 8-70
8-17-70	Perrio	TC for cleaning spill	B. Zurbano	12- 8-70
8-17-70	Perrio	TC for cleaning spill	F. Lazard	12- 8-70

Disbursements to Fleet Employees—1971
Gulf-East Coast Operations

Vacations—by check drawn by Gulf-East Coast Operations in Beaumont on First Security National Bank of Beaumont	$1,365,000.00
Cash supplied to Masters for disbursement on board ship, obtained from First Security National Bank of Beaumont	1,994,000.00
Allotments—checks drawn by Dallas Payroll Office at employees request	1,117,000.00
Federal Income Tax and Social Security deductions from employees' pay, transmitted to U.S. Government by Dallas Payroll Office	1,431,000.00
	$5,907,000.00
Sickness and Accident Payments and Standby Pay—vouchers issued in New York Office	$ 69,700.00

Ratio of Texas figure to New York figure approaches 99% to 1%.



Technical Building, Beaumont Refinery (Gulf-East Coast Operations Headquarters), from the West.

Grievances Presented at the Fifth Level to Gulf-East Coast Operations Management

Date of Grievance	Submitted by	Subject	Grievant	Date of Reply
12- 7-70	Weeks	Shifting B. W. Machines	T. Nason	12- 8-70
11- 3-70	Perrio	Seniority	J. Fair	11-20-70
10- 8-70	Perrio	Room Allowance	U. Benz and 9 others	11-17-70
9-18-70	Perrio	Cleaning Chill Box	G. Phillips	9-28-70
9-17-70 (letter)	Fitzgerald	Sailing time	General	9-23-70
9-17-70 (letter)	Fitzgerald	Fire Fighting School	General	9-23-70
4-16-70	Sanhueza	Overtime-extra rooms	R. G. Marshall	5- 4-70
4-17-70	Sanhueza	Pay and Subsistence	T. Nason	4-28-70
2-26-70	Perrio	Butterworthing	U. Benz	3-13-70
2-27-70	Perrio	O.T.-Fire and Boat Drill	M. Persall and 13 others	3- 6-70
2-27-70	Perrio	Pay status	J. C. Fleniken	3- 6-70
2-13-70	Perrio	Shift of Ship	M. Persall and 7 others	3- 6-70

WELCOME

Welcome to Mobil Oil Corporation's Marine Transportation Department and the Gulf-East Coast tanker fleet.

This booklet has been prepared to provide the new employee, who is going to sea for the first time, with information that will be of value to him when he joins his first vessel.

It will, also, provide valuable information to the new employee who has had previous sea service in other companies about personnel practices in Mobil.

Take time to read this booklet before you join your vessel. You will find the time well spent.

GULF-EAST COAST OPERATIONS

As a new employee there are certain things you should know about Mobil Oil Corporation and the Gulf-East Coast tanker fleet. Mobil's Marine Transportation Department is responsible for the movement of petroleum products (cargo) on oceans and inland waterways throughout the world.

This worldwide movement of petroleum products provides employment for people of all nationalities, colors, and creeds on board ships under the flags of several countries and in offices in cities all over the world.

You are concerned primarily with employment aboard American Flag ocean-going tankers operated by Gulf-East Coast Operations, a part of the United States Operations Division of Mobil's Marine Transportation Department.

Gulf-East Coast Operations has its main offices in the Mobil Oil Refinery in Beaumont, Texas. Two other offices are also maintained: one, in Mobil's Headquarters at 150 East 42nd Street, New York City, and the other at the Mobil Refinery in Paulsboro, New Jersey.

REPORTING ABOARD FOR THE FIRST TIME

Many of our new employees are making their first trip to sea. They may never have been aboard a ship of any kind. If you *are* one of these, you will find the following helpful.

When you first step aboard the ship from the gangway, you will probably be met by one of the officers or a member of the crew who will ask, "Are you the new messman (or wiper or ordinary seaman)?" From there, you will be directed or conducted through the process of meeting your supervisor, locating your room, signing on the ship's articles and starting to work.

If there is no one at the gangway when you come aboard, look around the deck and you will find someone to help you. There will always be a deck officer and three seamen on duty. Any of them will be glad to direct you.

It is a good idea to tell your first contact on board that this is your first trip to sea. He will take pains to see that you are properly directed, and if he is not busy with an essential activity at the moment he may escort you to meet your supervisor.

If you are reporting as Ordinary Seaman, your immediate supervisor will be the Boatswain (pronounced Bos'un). If you are a Wiper, your supervisor will be the First Assistant Engineer, and if you are a Messman you report to the Steward.

Your supervisor may not be able to devote full time to you immediately because of the press of duties in connection with docking, or other of the numerous activities required on a ship which has just arrived in port. If this is the case, make yourself comfortable in the crew's messroom with a cup of coffee until he is free to give full time to your indoctrination.

ORGANIZATION

Merchant ship officers are the men who have licenses issued to them after passing an examination before a United State Coast Guard examining officer. You do not salute officers nor do you follow military procedures on merchant ships. Merchant officers are in charge of the men working under them on the ship. They are the supervisory group with the skill and experience to keep the ship operating as a carrier of petroleum products.

The Captain is the officer in full command of the vessel. Reporting to him directly are: the Chief Mate for the deck department; the Chief Engineer for the engine department; the Radio Officer for communications and clerical work; and the Steward for the steward's department.

As a new employee you will be working in one of the following jobs:

As an ordinary seaman in the deck department; or,

As a wiper in the engine department; or,

As a messman in the steward's department.

These jobs are called "entry" ratings because you do not need any experience on a ship to work in these jobs.

There are in addition to the Captain and Chief Engineer at least three deck officers and three engine officers and one radio officer on each ship.

In the deck department there is an unlicensed man called a Bos'un who directs the work force in getting the work done that the Chief Mate has laid out. There are also six able bodied seamen and three ordinary seamen. The able bodied seamen called "AB's" and the ordinary seamen called "Ordinaries" are divided into three groups. These groups are called "watches" and there are two "AB's" and one "Ordinary" on each "watch." A "watch" is a working period of four hours. Watches start at midnight with the "12 to 4 watch" followed by the "4 to 8

watch" and then the "8 to 12 watch." At noon the watches start all over again with the men on the "12 to 4 watch" starting back to work. You can see from this that if you are assigned as an "Ordinary" you will be given a "watch" to stand. This is called "watchstanding" and you will be known as a "watchstander." You will "stand watch" for four hours and be "off watch" for eight hours. This routine goes on every day you are on the ship. During the daylight hours of your watch between 6 a.m. and 5 p.m. you will work on deck under the direction of the Bos'un. You may be painting, or preparing some part of the ship to be painted, or cleaning out tanks for the next cargo, or any other work that may be assigned to you. Between 5 p.m. and 6 a.m. you generally will not be doing the same work as you do during the day. During the night watch you will take your orders from the officer in charge of your watch rather than the Bos'un.

The Chief Engineer is in charge of the engine room and all machinery throughout the vessel. There are three engineer officers, each one in charge of a "watch." There is one oiler standing watch with each engineer officer. The First Assistant Engineer lays out the work for the engine room. There is a pumpman who handles the pumps for loading or discharging cargo and works on repairing ship's machinery. Some ships carry a machinist to help make rapairs to ship's machinery.

If you are assigned to a ship as a wiper you will work in the engine room and about the ship helping the engineers, oilers, pumpman or machinists in their work. You may also do general cleaning work or painting in the engine room.

Wipers are known as "dayworkers" because of their regular working hours are from 8 a.m. to 5 p.m. Monday through Saturday. They do not stand watches. Wipers generally are not required to work on Sunday.

The steward's department handles the cooking and

serving of meals and the cleaning of officers' rooms and other areas of the ship. The Steward is in charge of this department. There is a Chief Cook who handles the cooking. A Second Cook does the baking and helps the Chief Cook. A galleyman works in the kitchen, which is called a "galley," cleaning vegetables and pots and pans and helping the cooks prepare meals. There are two messmen. One serves meals in the Officers' dining room and the other serves meals in the crew's dining room. Dining rooms are called "messrooms." Messmen also set tables and wash and put away the dishes after the meals. They do general cleanup work in connection with the messrooms. There is also a utilityman in the steward's department. The utilityman does the general cleaning of the officers' quarters.

If you are assigned as a messman you may be given a job as either officers' messman, crew messman, or utilityman when you join the ship. You will work eight hours every day between 6:15 a.m. and 6:15 p.m. The Steward will set your hours so that you will generally only work eight hours during this twelve-hour period.

PERSONAL EQUIPMENT

You must bring your clothing with you. You should bring dress clothes for going ashore in port and work clothes for working and living on board the vessel.

Most seamen wear khakis or dungarees. Take at least three sets of work clothes with you. Normally you cannot buy clothing on board.

There is a washing machine on each ship for the crew to use. Washing power is supplied free of charge.

In some ports dress shirts or suits can be sent ashore for cleaning and are returned before sailing time. Ask the Steward if personal laundry will be sent ashore before you get to port. You must repay the Steward for the cost of any laundry or cleaning which you give him to be done ashore.

If you are being assigned as an ordinary seaman, make sure you have rain clothes with you. Deck department men seem to prefer rain suits. This is because they are outside in the weather a good bit of their working day. Messmen and wipers, because they generally work inside, can use regular raincoats.

Take good work shoes, preferably safety shoes. Sneakers, loafers, or run down dress shoes are not safe foot gear for use on ships.

Choose the clothing you bring with weather in mind. Remember it can be 70° leaving Beaumont in December and three days later be below freezing as you head north to a discharge port on the East Coast.

You will be supplied face soap, industrial soap, bed linens, towels, and matches. Shaving equipment, tooth paste and brushes must be brought with you.

You will sometimes have to travel to a distant port to join a vessel. ALWAYS carry your seamen's papers including Merchant Mariners Document, license, (if an officer), and International Certificate of Vaccination on your person. Do not pack these documents in your luggage because luggage sometimes goes astray. You can make emergency arrangements for clothes but you cannot sign-on without your seamen's papers.

MAIL

Mail is forwarded to each port in advance of the arrival of the ship. Your mailing address is:

John Doe
S/S "Name of Ship"
Mobil Oil Corporation
Gulf-East Coast Operations
P. O. Box 3444
Beaumont, Texas 77704

There are other addresses which may be used from time to time for different ports. You will learn these while you are on the ship. Your official mailing address, however, is the one given above.

Every vessel has a radio station on board. You can send a radiogram from the vessel. Also, your family can send one to you. This can be done through Western Union; giving them your name, the vessel's name and general location, for example: due New York in 2 days. Radiograms are for your own expense and are usually sent only in matters of urgent personal necessity.

TELLING TIME

You may be confused at first by the way seamen tell time on a ship. In fact, it is an easy system to learn. The day starts and ends at midnight.

At the start of the day midnight is called "zero hours" and is written 0000. Each hour after midnight is called by its value in hundreds, One a.m. is "oh-one hundred" (0100). Two a.m. is "oh-two hundred" (0200). Three a.m. is "oh-three hundred" (0300). This continues on through "oh-nine hundred (0900) or 9 a.m. At 10 a.m. the "oh" is dropped and hours then start being called "ten hundred," "eleven hundred" and "twelve hundred." At noon or "twelve hundred" you just keep going on with the count up to midnight which at the end of the day is called "twenty-four hundred" (2400). As you can see 1 p.m. is "thirteen hundred" (1300); 1:30 p.m. is 1330; 2 p.m. is "fourteen hundred" (1400); 2:15 p.m. is 1415, etc.

PAY DAY

The monthly wage rate set out in the Labor Agreement is divided by thirty days to arrive at a daily wage rate. You get paid this rate for each day you are on the payroll.

If you are on a ship that is in the coastwise trade, which

means sailing between a Gulf Coast port and an East Coast port, you will be paid in full at the end of two round trips, usually 24 to 26 days. The Captain will give you your money and you will sign the pay receipt for it. This is called "pay off" rather than "pay day."

Between "pay off" days you will be asked by your supervisor before you reach port if you want a "draw" in port. A "draw" is a pay advance against wages you HAVE EARNED, and is generally given where you have five or more days between ports. You do not have to make a "draw" if you don't want to. You can draw as little as five dollars. All amounts are subject to any withholding amounts which must be deducted from your pay. "Draws" are usually made arriving in a southern port and one northern port. "Pay off" is usually made in a northern port. You will become familiar with coastwise "draws" and "pay off" practices very quickly.

If you are joining a vessel which is making a foreign voyage you will sign Articles of Agreement before a U.S. Shipping Commissioner. The Commissioner will be on the vessel to sign you on and he will ask you if you want an "allotment." An "allotment" is part of your pay which will be sent to certain members of your family or a bank account either semi-monthly or monthly. The Commissioner will tell you how much you can "allot" and to whom you can "allot" it.

On Coastwise Articles you can have money sent home by means of a "draw check" which is like an allotment. Your supervisor can tell you about "draw checks."

When you go on vacation the personnel office will send you a check for your earned vacation.

If you should leave a ship without being paid off the Master mails your wage/overtime statement to the Dallas Accounting office. That office draws a check and mails it to the Beaumont Personnel office for forwarding to you—

this all takes time so don't expect to receive "unclaimed wages" until after several days have passed.

PORT TIME

A tanker stays in port only long enough to load or discharge its cargo. This usually takes sixteen to eighteen hours. In most ports you are free to go ashore only when you are not working. A "sailing board" will be next to the gangway where you leave the ship. It will have the "sailing time" written on it. The "sailing time" is the hour when the ship is to leave the dock or anchorage. Make sure you are back on board the ship before this time. Don't plan to come on board at the last minute. The ship may sail without you.

In some ports your vessel may go to an anchorage to await tide or for "lightening up." Going ashore may be restricted because of insufficient time. In any case, your supervisor can apprise you of all matters pertaining to going ashore.

Some men make agreements for one of them to stay on board and do the work of another man who goes ashore. This is called "exchanging watches." Any agreement to "exchange watches" must have the approval of your supervisor. This is very important! Do not "exchange watches" without your supervisor's approval. Make sure you know what the "sailing time" is before you leave the ship. Ask your supervisor if there is a telephone number you can call to check on the "sailing time" while you are ashore.

VACATIONS

You will generally be relieved for vacation after you have worked sufficient time to accrue the minimum vacation paid leave period. This will normally provide three vacation periods a year. Make sure the man who is to relieve you for vacation has reported on board before you leave

the ship. If your relief fails to show up for any reason you may be instructed to stay on board until the next port or to make another trip before going on vacation. Again, wait for your relief to come on board to relieve you before leaving the vessel.

IT IS A STANDING COMPANY RULE THAT:—
A MAN SCHEDULED FOR VACATION-PAID LEAVE IS REQUIRED TO REMAIN ABOARD THE VESSEL UNTIL HIS RELIEF IS PHYSICALLY PRESENT.

LEAVES OF ABSENCE

It is expected that you will plan to take care of personal business when you are on vacation and for this reason leaves of absence approvals are held to a minimum. But if you do have pressing need for a leave of absence—remember:

There is a proper way to request a leave of absence. Make the request in writing and send it to the Beaumont Personnel Office via the Master who will countersign it and add any pertinent comment he deems necessary. In case of emergency, sudden illness, accident or death in family, etc., request approval for such emergency leave from the Master before leaving the vessel and contact your Assignment Office at first opportunity after arrival home.

Men who leave a vessel without proper approval will be classified "quit" and will be subject to disciplinary action including termination of employment.

MOBIL INSISTS YOU BE SAFE

Oil tankers, refineries, and terminals employ a lot of people. When you practice "Safety First" you protect yourself as well as your shipmates.

Don't smoke or light matches on refinery property on the way to the ship.

Smoking on a ship is permitted only inside the after house and in certain parts of the midship house. LEARN WHERE SMOKING IS PERMITTED BEFORE YOU SMOKE.

When you join a ship be sure you take one bag at a time up the gangway. Keep one hand free to hold on to the gangway manropes. Every experienced seaman keeps "one hand for the ship and one hand for himself."

The handrails that run around the ship are just what the name says they are. Handrails are made to hold on to with your hands. Don't ever sit on a handrail. If the ship rolls or pitches you can very well fall into the sea.

Every ship has safety equipment for use when doing special work. You are required to work safely. This means wearing hard hats, face shields, goggles, protective gloves or clothing whenever they are needed.

A safety pamphlet is included with this booklet. Read what it says and then practice what it preaches.

The Company recommends that seamen wear safety shoes and that if they use eye glasses, they be of the safety lense type. Your supervisor can tell you how to obtain safety shoes and safety glasses through a special program where the Company pays part of the cost.

ILLNESS OR INJURY

If you become ill or get injured report this illness or injury promptly to your supervisor. There is a ship's Medicine Chest with a full stock of medicines, bandages and other medical supplies on board each ship. The Captain attends to all illnesses and injuries. Shore medical advice is also available to the Captain via the ship's radio. Visits to doctors and dentists in port will be arranged by the Captain. As a bonafide active, American seaman you are entitled to Medical/Dental treatment at a U.S. Public

Health Service Facility (Marine Hospital) free of charge. You must get a Master's Certificate of Ill or Injured Seaman from the Captain before going to the Public Health Service who will ask for the certificate before treatment.

If you elect to treat with a doctor, dentist or hospital of your own choosing you are responsible for payment of all charges. If you are enrolled in one of the Company group Medical Expense Plans you will be entitled to certain coverage as specified in that plan. It is your responsibility to claim such plan benefits by submitting your expenses directly to Metropolitan accompanied by the required claim form. You remain responsible for all costs not covered under the plans. Unless treatment by a private doctor or dentist has been specifically authorized by a qualified Company representative, the cost of private Medical/Dental treatment is your responsibility.

If you become seriously ill or injured while on vacation you must promptly notify the personnel office of this fact in order to qualify for Sickness and Accident benefits, these benefits will not be paid on a retroactive basis.

YOUR BENEFIT PLANS

When you have completed your six months' service as a probationary employee you will become eligible to enroll in the benefit plans. These plans include life insurance, a pension plan, total and permanent disability benefits, sickness and accident benefits, all provided without cost. There is also an optional hospital plan and major medical expense plan to which both the employee and the employer contribute. You will be given a copy of the plans and the forms to complete for enrollment after you have been employed for six months.

If on completion of your probationary service you do not receive enrollment forms immediately, report this to the Personnel Office in Beaumont so as to be sure you do receive

them for the completion of these forms is most important to you because:

1. You designate a beneficiary for your life insurance.
2. You can obtain medical expense insurance for yourself and dependents.
3. You become properly enrolled for the Retirement (Pension) Plan.

UNION REPRESENTATION

All unlicensed employees are represented in labor negotiations by the Oil, Chemical and Atomic Workers International Union, Maritime Local 8-801.

This Union bargains your wages, hours, working conditions, benefit plans, and other conditions of employment.

You were given a copy of the labor agreement when you were hired. Take time to read this book as soon as you can. You will be expected to live up to the agreement provisions as will the Company.

SHIPBOARD LANGUAGE

Seamen have built up a number of expressions and words which have meaning to them. This practice is no different than the words which other workers use in their particular jobs. No matter what job you start out on you will have to learn new words and expressions. Here are a few of the words most commonly used on a ship.

Aboard—On or in a ship.

Aft, After—Any direction from the bow toward the stern.

Aloft—Above the deck. (usually on masts, etc.)

Amidships—In the longitudinal, or fore-and-after center of a ship. Halfway between stem and stern. The term used to convey the idea of general locality but not that of definite extent.

Ballast—Weight, portable or fixed, introduced into vessel's tanks or compartments to improve trim or stability. Sea water is generaly used as ballast in tankers.

Beam—The extreme width of a ship.

Below—Underneath a deck or decks.

Bilges—The lowest portion of a ship inside the hull, considering the inner bottom, where fitted, as the bottom hull limit.

Bow—The fore end of a ship.

Bridge—A high transverse platform, often forming the top of a bridge house, extending from side to side of the ship, and from which a good view of the weather deck may be had. An enclosed space called the pilot house is erected on the bridge in which are installed the navigating instruments, such as the compass binnacle, the control for the steering apparatus, and the signals to the engine room. The operation of the ship is directed from the bridge.

Bulkhead—A partition in a ship which divides the interior space into various compartments. Corresponds to a "wall" in a building.

Deck—A platform or horizontal floor which extends from side to side of a vessel.

Draft—Of a vessel—the depth of a vessel below the waterline measured vertically to the lowest part of the hull or propellers.

Galley—The space on a vessel in which the food is prepared and cooked, the kitchen.

Gangway—The walkway up the ship's side for walking on and off the vessel.

Knot—One nautical mile per hour. (About 6,080 feet vs. land mile 5,280 feet)

Ladder—Any stairway or stairs.

Messroom—A space or compartment where members of the crew eat their meals; a dining room. A dining room in which officers eat their meals is called a saloon.

Port side—The left-hand side of the ship looking forward.

Quarters—Living space for personnel. It includes staterooms, dining salons, messrooms, lounging places, passages connected with the foregoing, etc.; individual stations for personnel for fire or boat drill, etc.

Starboard Side—The right side of a vessel looking forward.

Stern—The aftermost part of the vessel.

Topside—That portion of the side of the hull which is above the designed water line.

This booklet is issued only as a summary to assist you in getting started with Mobil. It is by necessity, relatively brief and general, and does not contain all the specific information on a particular subject. You can get specific information by consulting with your Supervisor.

LIST OF OFFENSES WHICH ARE CAUSES FOR DISMISSAL

The following list of offenses shall constitute cause for which employees may be discharged without further notice:

1. Intimidating, coercing or discriminating against a fellow employee because of membership or non-membership in any labor organization.
2. Wilful violation of any law.
3. Fighting or attempting bodily injury to another; drunkenness; conduct which violates common decency or morality; carrying concealed weapons.
4. Stealing, or malicious mischief resulting in the injury or destruction of property of other employees or of the Company.
5. Smoking, or carrying matches other than safety matches, or having open lights or fires within prescribed areas where such practice is forbidden.
6. Falsifying or refusing to give testimony when accidents are being investigated or when application for employment or physical examination is being made.
7. Insubordination, including failure or refusal to perform work assigned.
8. Wilful neglect in care or use of Company's property or equipment.
9. Harboring an infectious disease which might endanger the health of fellow employees.
10. Failure to report for duty except for causes beyond employee's control.
11. Sleeping while on duty.
12. Introduction, possession, or use on the property of the Company of intoxicating liquors or habit-forming drugs.
13. Smuggling of contraband or falsifying statement in regard to contraband.
14. Carelessness in regard to accidents and safety of fellow employees.

15. Failure to immediately report accidents or personal injuries to properly delegated authority wherever possible.

For other offenses not on the above list an employee shall not be discharged without first having been notified that a repetition of the offense will make him liable to dismissal.

February 25, 1972

cc: Mr. F. E. Claro
Dr. J. K. Stewart
Mr. E. E. Bruce

Mr. Oslie Parsons
19740 S.W. 115 Avenue
Miami, Florida 33157

FILE ON SECTION—

Dear Mr. Parsons:

Based on his examination of you on January 25th Dr. Stewart explained to you and advised us that you should not engage in any work requiring heavy lifting, pushing or pulling and that you should not continue in your work as a seaman.

The letter dated December 14, 1971 we received from your personal physician, Dr. Limond D.O. informed us that he had advised you not to do any heavy manual work that would require excessive exertion.

Dr. Lombardo, the heart specialist who examined you on February 18th wrote us that he had advised you to seek light duty shore work.

In view of Dr. Stewart's advice to us that you should not work as a seaman we shall have to terminate your employment when your Sickness and Accident benefits expire March 1, 1972. The date of your employment termination will therefore be March 2, 1972.

As a participant in the group plans for life insurance and medical expense insurance you can convert each of these to a personal policy with Metropolitan Life Insurance Company. A letter giving more detail about this as well as the necessary forms are enclosed.

We wish you the best and hope that you find suitable employment to replace your work as a seaman.

Yours very truly,

J. T. Knepper, Manager
Gulf-East Coast Operations

COTobey/vr
encl.

THE ATTORNEY GENERAL
OF TEXAS

Austin 11, Texas

March 14, 1961

WILL WILSON
Attorney General

Honorable David W. Ratliff, Chairman
Labor and Management Relations Committee
Senate of the State of Texas
Austin, Texas

Opinion No. WW- 1018

Re: Whether the "agency shop" clause in labor union contracts contravenes Sec. 8a, Article 5154a; Sec. 2, Art. 5207a; and Section 1, Art. 5154g; V.A.T.C.S.

Dear Senator Ratliff:

The Senate Committee on Labor and Management Relations has requested an opinion as follows:

> "Does the 'agency shop' clause contravene existing statutes of the State of Texas by requiring that employees covered by the clause, who fail *voluntarily* to *acquire* or *maintain* membership in the union, (as a condition of employment,) pay to the union each month a service charge or fee as a contribution toward the administration of the agreement and the representation of such employees?"

Your letter points out that many out-of-state companies have negotiated collective bargaining agreements with various unions containing "agency shop" clauses, which companies have branch plants in Texas, and that some

Texas corporations are being pressed to sign contracts containing this clause. Your Committee is interested in this problem to see if corrective legislation is required.

The standard "agency shop" clause in a contract between the union and management requires each employee who fails voluntarily to acquire and maintain membership in the union, as a condition of employment, to pay to the union each month a service charge as a contribution toward the administration of the contract and the representation of such employees. Such service charge is usually in an amount equal to the union's regular initiation fee and a month's dues for the first month after the contract goes into effect, and for each month thereafter in an amount equal to the regular monthly dues.

Section 8a of Article 5154a, Vernon's Civil Statutes, reads as follows:

> "*It shall be unlawful for any labor union,* labor organizer, any officer, any agent, or representative or any member of any labor union to *collect, receive or demand, directly or indirectly, any fee, assessment or sum of money whatsoever,* as a work permit or *as a condition for the privilege to work from any person not a member of the union;* provided, however, this shall not prevent the collection of initiation fees as above stated." (Emphasis added.)

Section 2 of Article 5207a, Vernon's Civil Statutes, reads as follows:

> "No person shall be denied employment on account of membership or non-memberhip in a labor union."

Section 1 of Article 5154g, Vernon's Civil Statutes, reads as follows:

> "It is hereby declared to be the public policy of the State of Texas that *the right of persons to work shall not be denied or abridged on account of membership*

> *or non-membership in any labor union* or labor organization *and that in the exercise of such rights all persons shall be free from threats, force, intimidation or coercion.*"

It is clear from a reading of the foregoing statutes that it was the intention of the Legislature to make membership or non-membership in a labor union a voluntary matter with each individual worker, and to protect him in his right to continue to work at his job, regardless of his decision. Section 1 of Article 5154a, V.C.S., reads in part as follows:

> "Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. *The working man, unionist, or non-unionist, must be protected. The right to work is the right to live.* (Emphasis added.)

The *Agency Shop* Contract is of fairly recent origin. Heretofore, the three usual types of union security have been: *the Closed Shop; the Union Shop;* and the *Maintenance of Membership Arrangement.*

Under the *Closed Shop* contract the employer can hire only union members, and is forced to discharge employees failing to maintain their membership in good standing in the union.

Under the *Union Shop* contract the employer can hire without regard to union membership, but the employee must become a union member within a specified time and thereafter maintain his membership in good standing.

The *Maintenance of Membership Arrangement* allows the employer to hire without regard to union membership or non-membership, but during a specified limited time at the beginning of the contract or of being employed, as the case

might be, every employee must decide whether or not he will join or remain a member of the union. Those who choose to join must remain members until the next so-called "escape period" which occurs at the beginning of each contract renewal. However, those employees electing not to join the union are free to remain as non-union employees for the life of the existing collective bargaining agreement.

If it be argued that the Agency Contract does not require any person to become a member of a labor union as a prerequisite to obtaining or holding a job, then let it be noted that Sec. 8a of Article 5154a, supra, prohibits the collection of any fee, assessment or sum of money whatsoever as a condition for the privilege to work from any person not a member of the union. Indiana, a right-to-work state, has held that the agency shop is lawful under *its* laws, but did so on the ground that the Indiana right-to work law is penal in nature, and must, therefore, be strictly construed. There being nothing in the Indiana statute which specifically prohibits the agency contract, the court held that under a strict construction of the penal law the agency shop contract could not be considered to be covered by the Indiana act by implication. *Meade Electric Co. v. Hagberg*, 159 N.E.2d 408 (Ind. App., 1959).

While the Agency Shop Contract as a type of labor union contract was not in vogue at the time of the enactment of Article 5154a, the Legislature certainly intended to cover this type of contract when it enacted Section 8a of Article 5154a, by whatever name it came to be called in later years. But aside from Article 5154a, the agency shop contract violates Section 2 of Article 5207a and Section 1 of Article 5154g, *since the required payment of the service charge is tantamount to compulsory membership in a labor union, and upon failure to pay the service charge, results in loss of the non-union worker's job, if the contract is enforced.* The payment of the service charge makes the non-union member subject to all of the pecuniary liabilities of the

union member, without any corresponding privileges. He is, in effect, a disenfranchised union member against his will.

In *A. F. of L. v. Mann*, 188 S.W.2d 276 (Civ. App., 1945) the Court was called on to construe Article 5154a. In construing Section 8a of Art. 5154a, the Court referred to closed shop contracts, and the arguments made by appellants that the fee charged against non-union workers was a part of the cost to such union in obtaining and maintaining union conditions and servicing the employees on the job. Indicative of the intent of the Court to apply Section 8a to more than the closed shop contract is the following language at page 285:

> ". . . enforced collection by unions from non-union employees for such benefits as a right to work is another matter, Carried to its logical conclusion, the same reasoning would justify such exactions on any job wherein unions are involved, *whether under closed-shop contracts or not;* and ultimately could lead to the same policy toward all labor, on the ground that all labor had benefited from union efforts. Thus the public interest is so affected by the practice prohibited in Sec. 8a, and the potential abuses and injustices to laborers who are not members of an organized union, whether from choice or inability to become so, that the Legislature was warranted in forbidding such practice. (Emphasis added).

If any Texas statutes affecting labor do not apply in any given situation, it will be because the Congress has preempted the field with its own legislation with regard to the particular facts of the case. Certain acts and conduct, such as peaceful picketing of an employer's place of business in an industry affecting interstate commerce, has been held by the Supreme Court of Texas, in *Ex Ponto Tweedll*, 309 S.W. 2d 834 (1958), to lie outside the jurisdiction of our state courts. But membership in a union as a prerequisite to obtaining or holding a job is a different matter. Congress

has made an exemption in favor of the states in the Labor Management Relations Act, 1947, in 29 U.S.C.A. Sec. 164 (b), which reads as follows:

> "Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

In *Finney et al v. Hawkins,* 54 S.E.2d 872, the Supreme Court of Appeals of Virginia was called upon to construe Virginia's "Right-to-Work" law, Section 1 of which reads as follows:

> "It is hereby declared to be the public policy of Virginia that the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization."

The Virginia court stated in the *Finney* case at page 877:

> "At pointed out in the state court decisions in State v. Whitaker, (45 S.E.2d 860) . . ., and Lincoln Federal Labor Union No. 19129 v. Northwestern Iron & Metal Co., 149 Neb. 507,31 N.W.2d 477, recent federal legislation makes clear that Congress did not intend to interfere with the right of States to prohibit agreements requiring membership in a labor organization as a condition of employment. . . . 29 U.S.C.A. Sec. 164 (b)."
>
> ". . . .
>
> "There was evidence to be found in the acts of many States and of the Federal Congress to support the view that discrimination against employees because they did or did not belong to a union was against the public interest and should not be allowed. Laws merely regulating the union obviously would not accomplish that purpose. Basically, agreements involving such discrimination are hostile to our free enterprise system and to individual liberty of choice and action. Legislation that protects the citizen in his freedom to disagree and to decline an association which a majority would thrust upon him on the ground that it knows what is best for him, does no violence to the spirit of our fundamental law. The protection of minorities is the boast of our institutions and a basis of their asserted superiority over totalitarian regimes. The results have demonstrated the value of the democratic process."

In response to your question, we hold that the "Agency Shop" clause in a contract between a labor union and management contravenes and is in violation of Section 8a of Article 5154a; Section 2 of Article 5207a; and Section 1 of Article 5154g of Vernon's Civil Statutes.

SUMMARY

The "Agency Shop" clause in a contract between a labor union and management violates Sec. 8a, Art. 5154a; Sec. 2, Art. 5207a; and Sec. 1, Art. 5154g, V.C.S.

Yours very truly,

WILL WILSON
Attorney General of Texas

By
Riley Eugene Fletcher
Assistant

REF:rd

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman
Joe McMaster
Jack Price
Martin DeStefano
Raymond Loftin

REVIEWED FOR THE ATTORNEY GENERAL
By: Morgan Nesbitt

April 23, 1970

Socony Vacuum Tanker Men's Association
Local 8-801, O.C.A.W.I.U.
Room 605
1 Beckman Street
New York, N. Y. 10038

Dear Sirs:

Enclosed for your information is a copy of a notice we are presenting to each new unlicensed employer. As we have previously advised you, Article I, Section 2b. of the Collective Bargaining Agreement is invalid under Texas law. We, therefore, feel that neither of us should place ourselves in the position that someone could say that we were enforcing a provision contrary to law.

Very truly yours,

John T. Knepper, Manager
Gulf-East Coast Operations

JTK/vr

bcc: D. J. Maroldy
P. H. Ghee, Attn: W. H. Greene, Jr.
A. E. Fischer
C. S. Townshend

EXHIBIT B

Unlicensed employees in the Gulf East Coast fleet are represented for collective bargaining purposes by SVTMA, Local 8-801, OCAWIU. As an unlicensed employee, the Collective Bargaining Agreement between the Union and the Company determines your wages, hours and other conditions of employment. In order that you may have a voice in these matters you may wish to become a member of this Union. Such membership is voluntary on your part and the Company neither encourages nor discourages membership. Under the current Agreement, if you become a member of the Union, you must continue to be a member and/or pay the regular union dues during the term of the Agreement.

I acknowledge and understand the foregoing.

....

Signed Date

July 1971

MARITIME LOCAL 8-801 O.C.A.W.I.U.

NEWSLETTER

The Union is happy to enclose copies of various ships minutes which have been forwarded to us recently. We also take the liberty to comment on certain questions which have been raised. On the whole, the minutes are well prepared and intelligently presented. We are happy to see that most members are taking an active interest in the Union.

We wish to resolve at the onset the question regarding Union membership. Our Contract is clear on this point and should be read by all members. Section 2 of the Contract provides in effect that persons who are members when the Contract was signed or any new employees must remain or become members of the Union or pay dues to the Union. *This is a condition of employment.*

As far as this Union is concerned, any employee in our Division of Mobil must either join our Union or pay dues to the Union. We intend to exercise our right to have the employment of any unlicensed seamen terminated who does not join or pay dues to the Union. We hope this answers all questions regarding this point.

The arbitration regarding Butterworthing is over and we are happy to report that we have been successful.

A number of inquiries have come in regarding wages, profit sharing, savings plans and vacations. We are reviewing the entire situation on these matters since these are subjects for our next negotiations. Any and all suggestions are welcome so please send them in.

There are a number of questions concerning seniority which have arisen. Please be advised that our Union takes very seriously any violation of our seniority rights. Our policy is to take immediate action whenever we are informed of a violation of seniority rights. We carefully investigate all grievances presented to us. As a matter of fact we presently have two such grievances on file with the Company and shall follow through to the utmost. In the case of Brother George LaChance who was demoted from Oiler to Fireman we have found that Brother Lachance quit Mobil shortly after the Strike and only returned as a new member. Therefore, his claim for seniority was not a valid one. You can see, that we will leave no stone unturned in investigating problems on seniority.

• • •

MEMORANDUM OF UNDERSTANDING AND AGREEMENT

The hereinafter signatory parties do hereby understand and mutually agree as follows:

(1) Neither the Company nor the Union shall take any retaliatory action or recriminate against any employee on account of activities during the strike to the date of this agreement, and hereafter.

(2) The terms and provisions of the collectively bargained Agreement between the parties hereto is subject to ratification by the Union.

(3) Upon receipt of notification from the Union to the Company that the aforesaid and referred to Labor Agreement collectively bargained has been ratified, thereupon the Company shall promptly notify the employees of their eligibility to return to work, standby status or vacation.

(4) Accordingly, each party agrees that any action, claim or charge it has instituted or could institute is resolved, and the Union will withdraw its NLRB Case No. 23-CA-3440 and the Company will obtain a dissolve of the temporary injunction at Beaumont, Texas, both with prejudice.

(5) The Company's waiver of action is based on the promise of the Union to remove all pickets in shore and in water against vessels and terminals, shipyards and refineries at which such vessels may call, load or discharge and no employee will engage in any violence or threat of violence from this date and hereof forward.

In Witness Whereof the parties hereto cause these presents to be executed by their duly authorized representatives as set forth below on this ..... day of October 1969, in New York City, N. Y.

Socony Vacuum Tankermen's Association Local 8-801 OCAWU By FJA By DHS	Mobil Oil Corporation Marine Transportation Department Gulf-East Coast Operations By John T. Knepper

Oil, Chemical and Atomic Workers International Union

By: R. L. Clark

October 30, 1969

Memorandum of Understanding & Agreement:

The hereinafter signatory parties do hereby understand and mutually agree as follows:

(1) Neither the Company nor the Union shall take any retaliatory action or recriminate against any employee on account of activities relating to the strike to the date of this agreement, and hereafter.

(2) The terms and provisions of the Collectively bargained Agreement between the parties hereto is subject to ratification by the Union.

(3) Upon receipt of ratification from the Union to the Company of the aforesaid and referred to Letter Agreement & Collectively bargaining has been ratified, thereupon the Company shall promptly notify the employees of their eligibility to return to work, steady status or vacation.

(4) Accordingly, each party agrees that any action, claim or charge it has instituted or caused institution to be resolved, and the Union will undertake to N.L.R.B.

(41) (Cont'd)

Case No. 23-CA-3440 of the Company will obtain a dissolve of the temporary injunction of Beaumont Tyco, both such prejudice

(51) The Company's Motion for action is based on the promise of the Union to remove all picketers on Sneeden water equipment trucks and terminals, shipyards and refineries on which such trucks may call, and to discharge and no longer engage in any violence or threat of violence from this date

Re [illegible] hereof

Petitioner Wherefore the petitioner here to cause these presents to be presented by their duly authorized representatives to set forth below on this ___ day of October 1969 in New York City.

Sworn Vacuum Tanker Inc. Petrol Oil Corporation
Acevedo Local 5-501 Marine Transportation Dept.
R.H.W.U. Gulf Coast Corporation
By P.K. October 30, 1969 By John Keegan
By
Oil Chemical and Atomic Workers International Union
By: R.L. Clark

274

BULK RATE
POSTAGE PAID
Beaumont, Texas
Permit No. 24

Mobil Mariner

Published for Employees of Gulf-East Coast Operations

Mobil Oil Corporation, Box 3444, Beaumont, Texas 77704. Address Correction Requested.

Number 61 July, 1971

MOBIL SHIPS RECEIVE COAST GUARD COMMENDATIONS

In recognition of their participation in the AMVER (Automated Merchant Vessel Report) Program, all Gulf-East Coast ships have received certificates of award and AMVER pennants from the Coast Guard.

The commendations, from Admiral C. R. Bender, Commandant, U. S. Coast Guard, U. S. Maritime Search and Rescue Coordinator, said "It is with a great deal of pleasure and deep appreciation that I take this occasion to forward to you the enclosed Certificate of Recognition for your efforts in furthering international maritime safety. I have also furnished a red AMVER pennant which, when flown, identifies your vessel as one which is continuously and unselfishly striving to make the oceans of the world safer for all who travel over and upon them."

The AMVER system is a maritime mutual assistance program whichprovides important aid to the development and coordination of search and rescue efforts in the offshore areas of the Atlantic Ocean, Caribbean Sea, Gulf of Mexico and the Pacific Ocean. Merchant vessels of all nations voluntarily send sailing reports and periodic position reports to the AMVER Center at Coast Guard New York via selected coastal, extra-continental or Ocean Station Vessel radio stations.

Information from these reports is entered into an electronic computer which generates and maintains dead reckoning positions for vessels while they are within plotting areas.

Search and rescue capabilities of the vessels are also filed in the computer's memory.

When an emergency arises at sea, the computer may be asked to provide the name, location and usefulness of vessels near the scene. The operator feeds in the position of the distress, and in seconds the computer prints out the names and positions of all participating vessels within the area of the distress. This is known as a SURPIC (Surface Picture). The computer also knows the speed and rescue capabilities of the vessels — including the type of medical assistance (doctor or medical technician) aboard.

Three Gulf-East Coast ships have recently participated in search and rescue operations under the AMVER program. In November, 1970 the MOBIL *FUEL* took part in the search for a vessel reported sinking off Cape Hatteras. Last April, the COLINA and SOCONY VACUUM diverted in response to an AMVER message, to aid in the search for a vessel reportedly in distress near Key West.

In neither case did the Mobil ships provide direct assistance, but, as the Coast Guard commendation said, "Such response and the coordination between those who ply the seas for pleasure or profit continues to be a major reassurance to those in peril."



The first Gulf-East Coast ship to receive her AMVER pennant and Certificate of Recognition was the MOBIL LUBE. Captain L. A. Papich, Marine Superintendent, presents the certificate to Captain Harold Vreeland, who was leaving the ship to go on vacation. From the left, Edward Hughes, third mate, Captain Geoffrey Hutton, relieving Captain Vreeland, John Lytton, radio officer, Captain Vreeland, Captain Papich and Henry Lightfoot, chief officer.

CHECK YOUR INCOME TAX WITHHOLDING

Many taxpayers are likely to have too little withheld from their paychecks this year, the Internal Revenue Service warns. For one thing, the top withholding rates are limited to 24 per cent for single persons and 25 per cent for married persons, while actual tax rates run much higher. In addition, withholding is based on the new 13 per cent standard deduction. But there's also a $1,500 ceiling on that deduction, and withholding doesn't allow for that.

Taxpayers most likely to need extra withholding include:

1. Employees who expect to earn more than $11,500 in 1971 and intend to claim the $1,500 standard deduction or itemize deductions totalling less than 13 per cent of their salaries.

2. Single employees who expect to earn $15,000 or more.

3. Married employees who expect to earn $25,000 or more and whose spouses are not working.

4. All working couples.

Employees in any of these categories who wish to avoid paying a large tax bill next April may either reduce their present number of claims exemptions or sign up for additional withholdings. Either of these methods may be accomplished simply by using Form W-4 available from masters or the Beaumont office.

Temporary Licenses Discontinued

The U. S. Coast Guard has announced that effective July 19, the policy of issuing temporary mate's and engineer's licenses will be discontinued. All temporary endorsements will be invalidated as of that date.



Mr. and Mrs. Charlie Twitchell in the back yard of their Beaumont home, with their two companions, the Dachshund Skipper and the white German Shepherd Schotzie.

Charlie Twitchell Celebrates Forty Years Service

On July 9, chief engineer Charles Twitchell completed 40 years of continuous Mobil service. He shipped out with the Company, his first trip to sea, just after graduating from high school in East Boston in 1931. The Depression was in full swing and job opportunities for a young high school graduate were not plentiful.

Charlie's stepfather, Jorgen Jorgensen, had been sailing as steward in Mobil ships for several years. He suggested that the young man go to sea. It seemed like a good idea at the time, and Charlie put in his application at the shipping office in Providence, with "Captain Dick" Comandich.

His first job was ordinary seaman in the LEVANT ARROW. After sailing as ordinary, messman and wiper in various ships, Charlie decided that he wanted to make his career in the engine room. Starting as wiper in the ARGON in August, 1933 he shipped as wiper for a year. For the next five years he alternated between fireman and oiler. (That was when the oiler did the water tending). In 1939 he became regular oiler. He got his third assistant's license in 1943 and first sailed on it as junior third assistant in the second MOBILOIL in November of that year.

The original MOBILOIL had been sunk by enemy action on April 29, 1942. Charlie was oiling on her at the time. He has a vivid recollection of the action.

"I was off watch and asleep when the first torpedo hit, about 0230," he said. "It hit the bow, but didn't disable us. The second torpedo hit amidships about 0500. It was light enough for us to see the sub, and we engaged her in a gun battle. My battle station was at the 5-inch gun on the poop deck. I was one of the ammunition passers. The sub stopped firing first and submerged. We thought the action was over. Then, sometime later the third torpedo hit in the pumproom amidships and we were finished. We took to the lifeboats and watched her break in half and go down in a matter of minutes, with the whistle blowing.

"Number one lifeboat had been demolished by the second torpedo. All hands had managed to get into the three remaining boats and under the command of Captain E. V. Farrow our little fleet set sail for the nearest land, Hispaniola. The next day we were sighted by a plane which dropped a message saying that a British navy ship would come to our rescue. The rescue ship never appeared. We later learned that it had run low on fuel and had to give up the search for us.

"The next day, May first, a U. S. Navy ship found us, rescued all hands, and landed us on May fourth at San Juan, Puerto Rico."

The next most dramatic incident that Charlie recalls in his 40 years at sea was a collision between two tankers in the Neches River in 1936. There was no fire, and nobody was injured. Charlie's luck was with him this time, too. He was a fireman, and his ship was rammed in the fireman's fo'c's'le, which was forward. All the firemen were aft at the time.

Charlie became second assistant in 1946, first assistant in 1949 and has been sailing as regular chief since May, 1970.

He has no immediate plans for retirement. He and his wife Martha have property on the Chattahoochie River in Alabama, and are planning to build a home there. When he does retire, he plans to help his son-in-law in a truck transmission business part time, relax and fish whenever he feels like it.

Charlie points with pride to a safety record that is going to be hard to beat. "In my 40 years at sea," he said, "I've never lost a day because of injury."



Ed Hughes holds the piece of the equator from the floor of the Pacific Ocean.

Ed Hughes Carries A Piece Of The Equator With Him

Third mate Edward Hughes has an unusual certificate attesting to his status as a Shellback (one who has made an ocean crossing of the equator.) He values it more than any plaque or scroll. It is a piece of the equator itself.

He was chief mate of the Research Vessel PILLSBURY, survey ship for the University of Miami, Florida, in 1967, engaged in oceanographic research. They were taking samples of the ocean floor off the west coast of South America in February. According to the navigator, one of these samples was taken at 103° W longitude, and 0° latitude. Each crew member received a plastic packet of gray sand labeled "Sample of Ocean Floor, Equatorial Pacific", with the ship's name, the date and location, showing that they had not only crossed the equator, but had a piece of it.

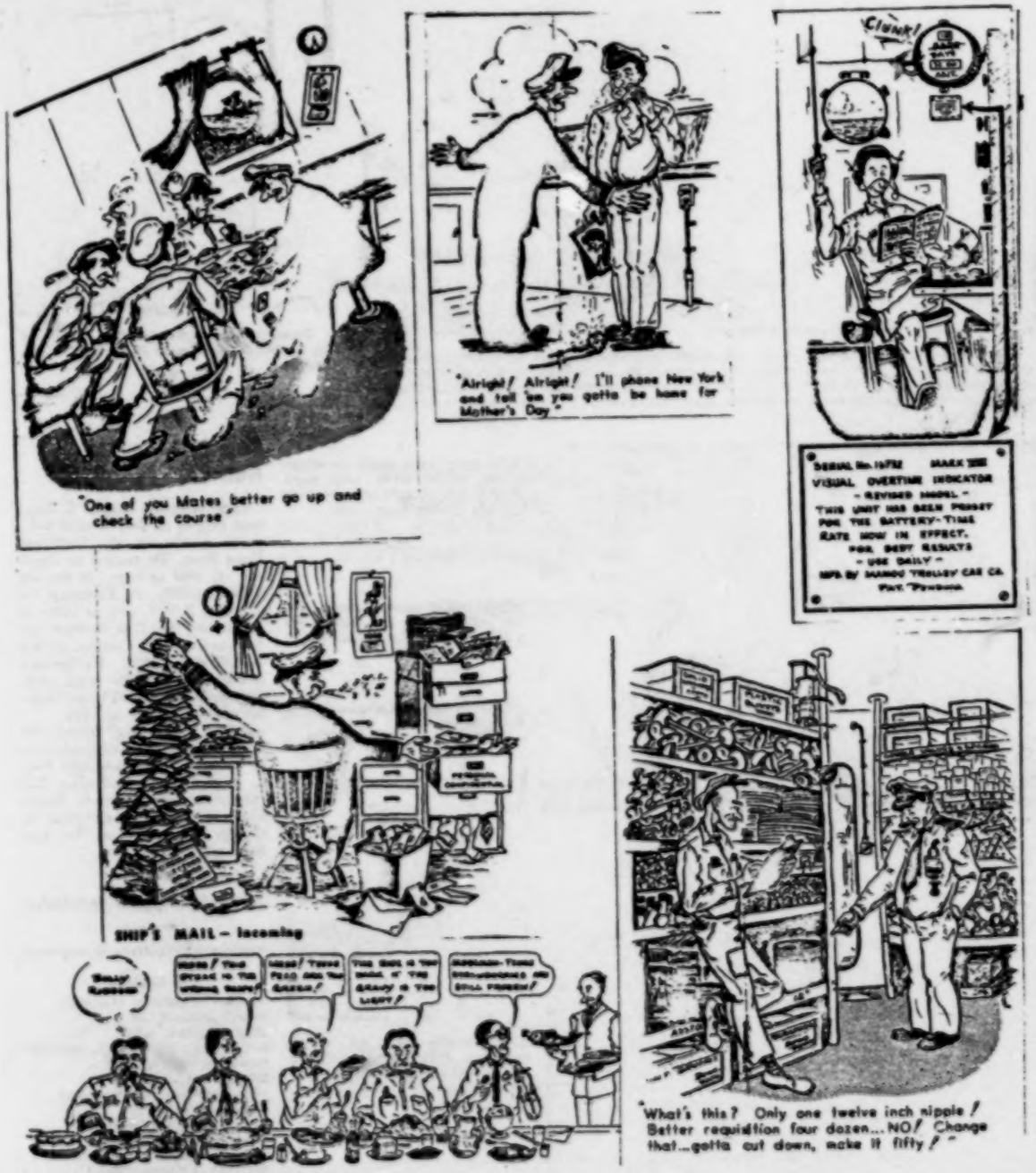
Mobil Mariner is published for the seagoing employees and annuitants of the Gulf-East Coast Operations, Marine Transportation Department, Mobil Oil Corporation.

John T. Knepper, Manager
R. D. Miller, Editor

Contributions and suggestions are invited. They should be addressed to The Editor, Mobil Mariner, Mobil Oil Corporation, P. O. Box 3444, Beaumont, Texas 77704.

The Ships—As Figured From the Office

By Al Merrikin—Courtesy of THE RANGE LIGHT



NEWS AND VIEWS FROM MOBIL CREWS



Terry Barnes took the photo above on vacation before joining the MOBIL MERIDIAN as first assistant. While he and Mrs. Barnes were visiting her relatives in Blarney, Ireland, they stopped in to visit with pumpman Jerry O'Leary's family in Roon, Ireland. Jerry is at the left and Mrs. O'Leary at the extreme right. Third from the left is the Barnes's daughter, Christina. All the others are members of the O'Leary family.



The unidentified photographer caught AB Bob Ellis in a happy mood at the helm of the COLINA.



LEFT: Coffee time in the messroom of the MOBIL LUBE, with bo'n Charlie Leibig, galleyman Howard Kay and Lennox Bullen, OS.

BELOW: Chief cook Florencio Arnias and messman Gary Hill in the galley of the SOCONY VACUUM.





LEFT: Relaxing off watch in the messroom of the MOBIL AERO are William Christie, oiler, Donald McIntyre, oiler and Frank Avery, steward.

August Bateman Retires

Chief engineer August T. Bateman retired on July 1 with 25½ years' service in the Gulf-East Coast Fleet. He started on January 11, 1946 as wiper in the old MOBIL FUEL. In February, he sailed as F/WT, and as Oiler in September. His first licensed job was junior third assistant in the SACHEM in 1951. He became second assistant the next year, first assistant in 1968 and regular chief engineer in 1970.

Before joining Mobil, he worked for various oil companies in Arkansas, Louisiana and Texas in production and pipe line operations. He came to Mobil from Consolidated Steel in Orange, Texas where he had been welder leadman.

Service Anniversaries

5 Years

ANGELITO CADAWAN, Second Cook

6 Months

ADRIAN ALFOUGH, Messman
BRUCE BROWN, AB
JOHN CUZELA, AB
PRUDENCIO FERNANDEZ, Messman
NORMAN FERRER, F/WT
GERALD MALABRE, OS
CARL MAGNUSSON, Pumpman
BLAISE MASELLI, OS
RAYMOND MYERS, Messman
RAYMOND NIEVES, Messman
JOSEPH RUSS, First Assistant
RONALD SERAKAS, Oiler
WALTER VARNADO, Messman

A G R E E M E N T

Between

MOBIL OIL CORPORATION
Marine Transportation Department
Gulf-East Coast Operations

and

SOCONY VACUUM TANKER MEN'S
ASSOCIATION LOCAL 8-801
OIL, CHEMICAL & ATOMIC WORKERS
INTERNATIONAL UNION, AFL-CIO

UNLICENSED SEAMEN

NOVEMBER 1, 1969

A G R E E M E N T

between

MOBIL OIL CORPORATION
Marine Transportation Department
Gulf-East Coast Operations

and

SOCONY VACUUM TANKER MEN'S ASSOCIATION LOCAL 8-801
OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO

NOVEMBER 1, 1969

THIS AGREEMENT is made by and between Mobil Oil Corporation, Marine Transportation Department, Gulf-East Coast Operations, hereinafter referred to as the Company, and Oil, Chemical & Atomic Workers International Union, AFL-CIO and its local Socony Vacuum Tanker Men's Association Local 8-801, Oil, Chemical and Atomic Workers International Union, AFL-CIO, jointly hereinafter referred to as the Union on behalf of all unlicensed personnel in the deck, engine, and steward's departments, employed on the United States Flag ocean-going vessels manned by the Company.

W I T N E S S E T H

WHEREAS, The Socony Vacuum Tanker Men's Association was certified by the National Labor Relations Board on March 24, 1941 in Case No. R-1633 as the exclusive representative for the unlicensed personnel employed by the Company, and

WHEREAS, said Certification of Representatives issued in Case No. R-1633 was amended by substituting "Socony Vacuum Tanker Men's Association, Local 8-801, Oil, Chemical and Atomic Workers International, AFL-CIO," for "Socony Vacuum Tanker Men's Association" on August 3, 1967, in Case No. 2-AC-2.

NOW, THEREFORE, it is understood and agreed between the parties as follows:

ARTICLE I
GENERAL CONDITIONS

1. RECOGNITION

The Company hereby recognizes the Union as it is herein stated and in accordance with the decision and order of the NLRB dated August 3, 1967, in Case No. 2-AC-2 as the exclusive collective bargaining representative for all unlicensed personnel in the deck, engine, and steward's departments employed on the United States ocean going vessels manned by the Company for the purpose of collective bargaining with respect to wages, hours of employment, working rules, and other conditions of employment.

* 2. UNION SECURITY

a. All employees who are currently members of the Union or who become members of the Union shall, as a condition of employment, continue to remain members and/or pay the regular union dues during the term of the Agreement.

b. For the duration of the Agreement all employees hired shall, as a condition of employment, become members of the Union and/or in the alternative pay the regular union dues and initiation fees within 31 days from the employment date.

c. Fifteen days prior to the termination date of this Agreement employees may, by serving notice by registered mail on the Company and the Union, elect to withdraw from the Union and/or discontinue paying dues.

3. The Company agrees to honor all Dues Deduction Authorization letters submitted in the following form and pay such deductions monthly to the Union by the 15th date of the month following deductions.

Date _____

Mobil Oil Corporation
Marine Transportation Department
Gulf-East Coast Operations
P. O. Box 3444
Beaumont, Texas 77704

You are hereby authorized and directed:

a. To forward to the Union a sum each month equal to the monthly dues established and communicated to you by the Socony Vacuum Tanker Men's Association, Local 8-801, OCAWIU. Such monies shall be paid monthly in
* my behalf as my dues, or the equivalent of such dues, to the said Socony Vacuum Tanker Men's Association, Local 8-801, OCAWIU. You are further authorized to withhold the complete amount of monies paid over by you in my behalf under this authorization from the next vacation check due me or in event of my termination from any monies due me.

b. You are further authorized to withhold an amount equal to the initiation fees as indicated to you by the Union when the Union informs you I am a new
* member, or have agreed to pay the equivalent of dues and initiation fee. Such initiation fee shall be withheld from the monies due me during the first month in which I become a new member and no other monthly dues shall be deducted during this month. The initiation fee shall be paid in my behalf to the designated Union office and be deducted from my next vacation check or in the event of termination from any monies due me.

This authorization shall become effective as of the date hereon and shall continue in effect for one year from that date and for each year thereafter unless terminated by me in writing by registered mail to the Company and to the Union not earlier than twenty (20) days nor later than ten (10) days prior to any anniversary date hereof.

Signed_____

Witness_____

4. LOCAL UNION OFFICERS

To assist in the handling of grievances that may arise during the life of this Agreement, or for periods of negotiation for the renewal or modification of this
* Agreement in accordance with the terms herein, Local Union Officers will be assigned to the Standby Staff at their regular rates of pay, subsistence, and transportation allowances, on a rotating basis, two at a time, for a
* period not in excess of ninety days. During such assignments, their hours and working conditions shall be the same as those of the Standby Staff. The Union shall immediately advise the Company in writing of the sequence
* in which the Local Union Officers are to be rotated on this assignment.

5. BULLETIN BOARD

Each vessel shall have a glass enclosed bulletin board for the Union's exclusive use in the unlicensed employees' quarters for the posting of notices, announcements, and other material relating to the Union's affairs. Propaganda, political matter, or advertising shall not be posted. The Union will remove any matter which in the opinion of the Company does not comply with these provisions.

6. TERM OF THE AGREEMENT

This Agreement shall become effective on the date the Union notifies the Company in writing that it has been
* ratified, and shall continue until July 31, 1972, and from year to year thereafter unless written notice to terminate or modify this Agreement is filed by either
* party 60 days prior to July 31, 1972, or any subsequent one year date thereafter.

7. ANTI-DISCRIMINATION

The Company and the Union agree not to discriminate against any employee on account of race, color, or membership or non-membership in any church, fraternity or society provided that any such membership is not inimical to the interests of the state or the nation.

8. NO STRIKES

Neither the Union nor any member thereof during the life of this Agreement, or during the period of negotiations for its modification, extension or renewal shall instigate, encourage or take part in any strike, picketing, sit-down, slow-down or stoppage of work, either direct or in sympathy with third parties which in any way would hinder or restrain the movement of the Company's vessels, or the loading or discharging of cargo from such vessels. Any employee who violates any of the above provisions shall be subject to immediate discharge. Such action on the part of the individual, however, shall not abrogate this Agreement.

* It is provided, however, that the Union may between January 1st and 8th, 1971, and between January 1st and 8th, 1972, give written notice of its desire to strike as provided below.

If such notice is given and if on the 21st day after such notice, Mobil employees represented by OCAWIU are on strike in one or more Mobil refineries or terminals, the Union may call a strike aboard any vessel calling at such struck refineries or terminals for the purpose of loading or discharging cargo there, providing the strike is still in progress at such terminal or refinery. The strike of such vessels shall continue only so long as the striking employees in the refinery or terminal at which the vessel has been struck remains on strike.

The foregoing applies only to bona-fide strikes called by the Union and is not to be construed to relieve individual employees of their obligation not to strike when such strike is not sanctioned by the Union.

In the event the Union's exercise of its rights under this provision results in a strike aboard any vessel, the Company shall be free of its obligations under Section 9 with regard to lockouts with respect to that vessel.

9. NO LOCKOUTS

During the life of this Agreement, or any period of negotiation for its modification, extension, or renewal, the Company agrees that there shall be no lockout of any of the employees covered by this Agreement. The foregoing shall not be construed to prevent or limit the right of the Company to discharge employees covered by this Agreement as hereinafter provided.

10. WAR BONUS

For the purpose of establishing war risk life insurance, war risk areas, bonus rates payable, port bonuses, reimbursement for loss of personal effects and provisions governing repatriation, a supplemental agreement will be negotiated between the parties.

11. VALIDITY

In the event that any provision of this Agreement shall at any time be declared invalid by any court of competent jurisdiction, such decision shall not invalidate the entire Agreement, it being the express intention of the parties hereto that all other provisions, not so declared invalid, shall remain in full force and effect, and both parties will meet within ten (10) days to attempt to work out a new Agreement on those matters that were invalidated.

In the event that any competent authority enacts any law or regulation requiring additional compensation to personnel covered by this Agreement, the provisions of this Agreement pertaining to wages and vacation-paid leave may be cancelled by the Company. In the event of such cancellation, both parties to the Agreement will meet within ten (10) days to attempt to work out a new agreement on those matters. This is not for the purpose of reducing monthly compensation through wage rates or vacation-paid leave.

12. MASTER'S AUTHORITY

It is understood and agreed that nothing contained in this Agreement is intended to or shall be construed to restrict

in any way the authority of the Master or prevent the obedience of any member of the crew to any lawful order of any superior officer.

13. GRIEVANCE PROCEDURE

Efforts shall be made to adjust individual grievances which may arise under the terms of this Agreement in the following manner and order:

First: Present the complaint to the immediate superior; Deck Department - Boatswain; Engine Department - First Assistant Engineer; Steward Department - Steward; failing a satisfactory adjustment in this manner,

Second: Present the complaint in the Deck Department - Chief Mate; Engine Department - Chief Engineer, in person or through the official Department or ship representative of the Union; failing a satisfactory adjustment in this manner,

Third: Present the complaint in person or through the official department or ship representative of the Union to the Master; failing a satisfactory adjustment in this manner,

Fourth: Present the complaint to the Port Staff (Deck Department - Marine Superintendent or Assistants; Engine Department - Engineering, Maintenance Superintendent or Assistants; Steward Department - Port Steward or Assistants) in person or through the official department representative and the official ship representative of the Union; failing a satisfactory adjustment in this manner,

Fifth: Present the complaint to the Gulf-East Coast Operations office at Beaumont, Texas, in writing on the approved grievance form, through Local Union Officers or someone appointed by the Local Union Officers.

Each of the above steps must be followed in the order given. As a matter of good order and discipline it is understood that a department representative, duly elected by members of the Union from a particular department on board the vessel, may handle matters pertaining to the department.

The ship's representative, duly elected by the members of the Union on board the vessel, may handle matters pertaining to the welfare of the unlicensed personnel of the entire vessel.

For the mutual benefit of both the Union members and the Company, all grievances must be initiated within sixty (60) days of the date of origin or they shall be declared null and void.

The Company will agree to meet with the Union as soon as practicable for the discussion of grievances and any decision will be retroactive if settlement is involved.

14. UNION RIGHT TO CONFER

Official representatives of the Union who are employees of the Company on board a vessel or assigned to such vessel, shall have the right to confer with the representative or representatives of the Company during working hours without loss of time or pay either on board such vessel or at the Company's offices or other designated shore point, provided this does not interfere in any way with the efficient operation of the vessel.

15. ADDITIONAL REPRESENTATION

In order that employees covered by this Agreement may have access to a Union representative while at sea as well as while ashore, it is agreed that in addition to
* the Union representatives, who are Local Union Officers, there may be a number of Union representatives equal to the number of ships from time to time in active service. The Union agrees to advise the Company at the beginning of the contract and promptly from time to time thereafter as the number of ships in active service fluctuates, of the names of employees designated as Union representatives.

The Company agrees that the crew of each vessel will include one of the designated Union representatives, except that if there is no designated representative available the Company agrees to recognize a temporary alternate representative selected by the Union from the crew provided such representatives are approved by the crew of the particular vessel.

16. ARBITRATION

a. Any question of fact arising out of the interpretation or misapplication of this Agreement or the alleged violation of the express terms of this Agreement which is not settled in accordance with the grievance procedure outlined in Step 5 shall at the request of either party be submitted to a Board of Arbitration. The party moving to arbitration will request a list of seven arbitrators from the American Arbitration Association with a copy of same to the other party.

b. The Board of Arbitration shall be selected as follows: one (1) member to be chosen by the Union, one (1) member to be chosen by the Company. These two shall meet within ten (10) days from the date they are supplied the list of arbitrators (Saturdays, Sundays, and holidays excluded) for the purpose of selecting a third member from said list. If they cannot agree upon a third member, the American Arbitration Association will submit a second list of seven (7) names from which the members will select the arbitrator by alternately striking a name until only one remains.

c. The decision of the majority of the said Board of Arbitration shall be final and binding upon the employee, the Company, and the Union, and shall conclusively determine the same not to exceed the life of this Agreement. The Board of Arbitration shall not have the jurisdiction nor authority to render a decision that would have the effect of adding to, deleting from, modifying or expanding the expressed written terms of this Agreement.

d. The Company and the Union shall bear the expenses of their respective appointees and shall share equally the expenses of the third member. After the Board has completed its hearings and reached its decision, the award shall be announced immediately.

e. If either party refuses to arbitrate under the conditions as set forth above, or, after arbitration, refuses to abide by the decision as heretofore prescribed, the other party in addition to its rights and remedies, may declare this Agreement null and void.

17. CONTINUITY OF EMPLOYMENT

Unlicensed personnel may remain continuously in the employment of the Company provided that both the Company and the employee desire such employment to continue. The Company wishes to encourage continuous service for all unlicensed personnel whose conduct, ability and performance of duties are satisfactory.

* In the event of sale or elimination of the entire Gulf-East Coast fleet, as covered by this agreement, the Company will notify the Union at least 60 days prior to the conclusion of such sale or elimination of same.

During this 60-day period the Company and the Union will meet for the purpose of negotiating termination pay.

18. SENIORITY

Employees covered by this Agreement shall be credited with fleet employment and job assignment seniority as explained herein provided they have completed 180 days of active service with the Company.

Until an employee has 180 days of active service he shall be considered as on probation and his services may be terminated at the discretion of the Company.

a. The Company agrees to furnish the Union a list of employees by departments showing the following dates:

1. Date of employment in the fleet.

2. Date of first assignment to his present position.

3. Date of employment in the Company.

New lists will be furnished the Union annually. The present seniority list will not be affected by this language.

* Employees hired on or after November 1, 1969, will be added to the seniority lists in accordance with the dates on which they became fleet employees. Lists of new employees and terminations will be supplied on a monthly basis.

* b. Promotions within a department that involves going into the rank of boatswain, pumpman, machinist, or chief steward; the following factors shall be considered:

1. Fleet seniority
2. Demonstrated ability
3. Physical fitness

Where demonstrated ability and physical fitness are relatively equal between two or more applicants for the above ranks, fleet seniority shall govern.

* c. In promotions in any department to any rank other than the above four, the same shall be in accordance with fleet seniority subject to the employee having the required endorsements.

* d. In all cases of demotions or lay off due to the lack of work such will be in accordance with fleet seniority. The seniority provisions on layoff will encompass the principal that the last man in is the first man out and the first man in is the last man out.

19. WORKAWAYS

No workaway shall be carried except for the sole purpose of providing transportation and in such cases, shall be in addition to the regular crew.

20. DISCIPLINE

Recognizing the necessity for discipline on board vessels and at the same time in order to protect employees against unfair loss of jobs, the Union and the Company agree that there will be posted by the Company on the bulletin board of each vessel, a list of rules which shall constitute just cause for which unlicensed personnel may be discharged without further notice.

For other offenses not on the posted list, members of the unlicensed personnel shall not be discharged without first having been notified in writing that a repetition of the offense will make him liable to dismissal. In the event that unlicensed personnel feel that any of the rules or regulations promulgated by the Company are inconsistent with the terms of the Agreement, such members agree to make proper and orderly representation as outlined under the grievance procedure of the Agreement.

The Company and the Union shall meet at the request of either party to discuss individual cases of employees who have been separated or suspended for just cause.

The Company will provide the Union with copies of letters of discipline by either registered or certified mail with return receipt requested.

21. BENEFIT PLANS

During the term of this Agreement all employees covered by it will be eligible to participate in the Company's Marine Benefits Program as set forth in a separate Memorandum of Understanding dated November 30, 1967,
* as amended.

22. MEDICAL EXAMINATIONS

All unlicensed personnel shall submit to and undergo such medical examinations as are or may be required by the Company from time to time and the Company shall retain the right to reject such unlicensed personnel as may be determined by the Company's medical examiners to be unfit for employment in keeping with the Company's rules and regulations. The Company agrees to review carefully any case which the medical examiners of the Union certify to be free from communicable disease and disabling defects and to be able to do the work applied for by the applicant, and if a review fails to establish the facts to the mutual satisfaction of the Company's and the Union's medical examiners concerned, the examiners of the Company and the Union will agree upon a suitable outside doctor whose independent judgement will be determining on the facts at issue. The expense of the outside consultant will be borne equally by the Company and the Union.

23. SAFE GEAR & WORKING EQUIPMENT

The Company will continue its policy of exercising due diligence in furnishing safe gear and working equipment and in making every reasonable effort to provide safe working conditions on board vessels at all times. All vessels of the Company will be properly secured for sea before leaving a safe harbor. The Company will provide protective working gear when employees are paint spraying; handling chemicals; or cleaning chemical tanks.

24. QUARTERS CLEANLINESS

All quarters are to be kept free from vermin and clean insofar as possible and all unlicensed personnel are to cooperate actively in this respect. All quarters of the unlicensed personnel shall be painted out as required on ship's time.

25. QUARTERS VENTILATION

All quarters and messrooms shall be adequately ventilated and sufficient fans to secure such ventilation

shall be installed. Such spaces are to be suitably screened. All personnel are required to turn off all fans when quarters and messrooms are unoccupied.

26. LOCKERS

A sufficient number of lockers shall be installed or renewed so that each employee shall have one full length locker with sufficient space to stow properly a reasonable amount of gear and personal effects. Separate storage space provided for oilskins and boots will not be used for other purposes.

27. BEDDING

The following items shall be supplied to the unlicensed personnel:

a. A suitable number of clean blankets;

b. Bedspreads, white sheets, and pillow cases shall be changed once each week; and

c. Face and bath towels which shall be changed twice weekly. No clean linens or towels shall be furnished until soiled linens and towels have been returned to the place designated by the Steward.

Mattresses or pillows filled with straw or excelsior shall not be supplied and mattresses and pillows shall be replaced promptly with new ones when conditions warrant it.

28. SANITARY WORK

In the interest of the welfare of the crew, the Union agrees that those men in each department whose regular duty it is to clean washrooms and toilets shall be required to do sanitary work in the aforementioned places during Sunday mornings and during holiday mornings without additional pay but in no case shall such required work exceed twenty minutes.

29. COFFEE TIME

Fifteen minutes will be allowed in the forenoon and fifteen minutes in the afternoon for coffee time. In addition, the ordinary seamen on the 12:00 to 4:00 watch will be given sufficient time off before coffee time to make coffee in the afternoon.

30. MEAL HOURS

Meal hours shall be as follows:

Breakfast	7:30 a.m. to 8:30 a.m.
Dinner	11:30 a.m. to 12:30 p.m.
Supper	5:00 p.m. to 6:00 p.m.

These hours may be varied not to exceed one hour either way. One unbroken hour is to be allowed for each meal. When a meal is served early, all employees will eat early.

31. REFRIGERATORS

Refrigerators shall be furnished for night lunches for unlicensed personnel.

32. BREAD AND MILK

For vessels running coastwise, on arrival at discharge ports, sufficient bread if available, will be supplied for a 48 hour period. Thirty (30) gallons of fresh milk shall be provided at each end of the voyage but at intervals of not less than five (5) days. Forty (40) gallons will be supplied those vessels trading to Albany or Boston and ports north of Boston.

33. DISHES

All dishes provided shall be crockery ware.

34. HOLIDAYS

The Company agrees to recognize the following as holidays:

(1) New Year's Day
(2) Lincoln's Birthday
(3) Washington's Birthday
(4) Memorial Day
(5) Independence Day
(6) Labor Day
(7) Veterans' Day
(8) Thanksgiving Day
(9) Christmas Day

In the event that any of the above mentioned holidays fall on Saturday or Sunday, whether in port or at sea, the following Monday shall be observed as such holiday.

35. SHIPYARD LIVING CONDITIONS

The Master will have all unlicensed employees notified by 1700 hours each day that work is scheduled to be done between midnight and 0800 which will interfere with sleeping and offer quarters allowance as specified in Section 123 to all who wish to avail themselves of this offer.

Should unplanned work occur between the hours of midnight and 0800 which prevents the employee from sleeping the quarters allowance as specified in Section 123 shall be paid to each employee who was on board when such work was performed and such employee may avail himself of the right to go ashore at that time and be paid the quarters allowance.

ARTICLE II
DEPARTMENTAL WORKING RULES

DECK DEPARTMENT

* 36. DAY WORKERS' HOURS

The scheduled hours of work for dayworkers shall be from 8 am to 12 noon and 1 pm to 5 pm. Work performed outside these scheduled hours and all work performed on Saturdays, Sundays and Holidays shall be compensated

at the rate of one hour pay at the contract overtime rate for each hour of work.

On Sundays and Holidays and between the hours of 5 pm and 6 am at sea and on Saturdays, Sundays, and Holidays in port only work necessary for the safe navigation and normal operation of the vessel shall be required.

* 37. WATCHSTANDING HOURS

At sea or in port, employees shall stand regular watches as required by the Master. On Saturdays, Sundays and Holidays watches and work performed off watch shall be compensated at the rate of one hour pay at the contract overtime rate for each such hour of watch or work off watch.

On Sundays and Holidays at sea and on Saturdays, Sundays and Holidays in port or between the hours of 5 pm and 6 am only work essential for the navigation, cargo handling, dispatch or uninterrupted operation of the vessel shall be performed. No chipping, scaling or maintenance of a noisy nature shall be performed between 6 am and 8 am.

38. WHEEL DUTY

When practicable, men on wheel duty shall not be required to stand more than two hours wheel watch in any four-hour watch. This shall not include the regular advancing or retarding of the ship's clock, unless the clock retards one-half hour or more, in which latter case the two men standing wheel watches on this watch shall split the extra time equally.

39. PAINTING, SCALING, ETC.

It shall be the duty of the Deck Department to maintain the good condition by washing paint work, scaling and painting as may be required, the pumproom above and including the floor plates on ship's time. They shall paint the cargo pumps and shellac the decks in the Steward Department quarters.

40. STORES HANDLING

Members of the deck department will handle stores and supplies for deck, engine, and steward's departments from the side of the ship, or on the dock to the ship and steward's stores to storerooms and iceboxes.

41. SANITARY WORK

The employees shall be required to clean their toilets, washrooms and quarters daily on ship's time. The cleaning of toilet and washrooms shall be done by the ordinary seaman.

ENGINE DEPARTMENT

* 42. DAY WORKERS' HOURS

The scheduled hours of work for dayworkers shall be from 8 am to 12 noon and 1 pm to 5 pm. Work performed outside these scheduled hours and all work performed on Saturdays, Sundays and Holidays shall be compensated at the rate of one hour pay at the contract overtime rate for each hour of work.

On Sundays and Holidays and between the hours of 5 pm and 6 am at sea and on Saturdays, Sundays, and Holidays in port only work necessary for the safe navigation and normal operation of the vessel shall be required.

* 43. WATCHSTANDING HOURS

At sea or in port, employees shall stand regular watches as required by the Master. On Saturdays, Sundays and Holidays watches and work performed off watch shall be compensated at the rate of one hour pay at the contract overtime rate for each such hour of watch or work off watch.

On Sundays and Holidays at sea and on Saturdays, Sundays and Holidays in port or between the hours of 5 pm and 6 am only work essential for the navigation, cargo handling, dispatch or uninterrupted operation of the vessel shall be performed. No chipping, scaling or maintenance of a noisy nature shall be performed between 6 am and 8 am.

44. PUMPMAN AT SEA

a. The scheduled hours of work for pumpmen shall be 8:00 a.m. to 12:00 noon, and from 1:00 p.m. to 5:00 p.m. For all work performed outside of scheduled hours, he shall be paid at the regular overtime rate.

b. Pumpman's duties shall consist of handling fuel oil, ballast, discharging cargo, and tank cleaning equipment and all work necessary for the maintenance and operation of cargo pumps, auxiliaries, general cargo lines and all deck machinery. He shall not be required to chip paint, scale paint, polish brass, soogee, or do any work that is not considered maintenance for the machinery under his care. He shall not be required to make heavy installations where this work is customarily done by shore gangs; this, however, shall not be construed to apply to renewals and replacements of wornout equipment.

45. PUMPMAN IN PORT

The pumpman's normal working hours in port shall be eight per day between 8:00 a.m. and 5:00 p.m. weekdays. He may be required to perform work in excess of these hours but for such work he shall be paid at the overtime rate. He will not be required to take bunkers in port.

46. MACHINIST

The machinist, when carried, shall assist in the general repair, upkeep and reasonable installation of ship's machinery and equipment as directed by the engineer in charge. He shall not be required to make heavy installations where this work is customarily done by shore gangs; this, however, shall not be construed to apply to renewals and replacements of wornout equipment. He shall not be required to do any painting or chipping or scaling of paintwork or polishing brass work.

47. OILERS AND/OR UNLICENSED JUNIOR ENGINEERS AT SEA

* Oilers and/or unlicensed junior engineers shall assist by performing general repair, upkeep, and reasonable installation of machinery and equipment and assist in the operations of the plant, as directed by the engineer in charge. They are to keep floor plates wiped in the immediate vicinity of moving machinery located in the engine room spaces and shall also maintain the station assigned to them on the operating platform provided such maintenance does not exceed one hour daily. They shall not be required to paint, chip, soogee, polish brass, or scale on watch.

48. OILER AND/OR UNLICENSED JUNIOR ENGINEER IN PORT

Duties shall be the same as at sea; however, when watches are broken, the hours of work shall be eight each day between midnight and midnight. They shall not be required to paint, chip, soogee, polish brass, or scale.

49. FIREMEN, WHEN CARRIED, AT SEA

On watch they shall tend fires, clean burners, fuel oil strainers, and keep their stations clean. They shall not be required to chip, paint, scale, soogee, or polish brass; however, they shall clean any loose oil that may result from their work. They are not to tend water unless the checks and gauges are in the fireroom in which case they will be required to tend water and shall be rated as firemen-watertenders. Firemen-watertenders shall remain in sight of the boiler gauge glasses at all times unless properly relieved. Firemen, when required, shall assist the engineer in blowing tubes when blowers are located in the fireroom.

50. FIREMEN, WHEN CARRIED, IN PORT

When watches are not broken, their duties shall be the same as at sea. When watches are broken, their hours shall be the same as day workers and their duties shall consist of assisting in the general repair and maintenance work as directed by the engineer in charge.

51. ENGINEROOM MAINTENANCE MAN

The engineroom maintenance man, when carried, shall assist in the general repair, upkeep and inventory of equipment, stores, and spaces as directed by the engineer in charge and his hours shall be those of a day worker.

52. WIPERS, AT SEA AND IN PORT

They shall be required to do the general cleaning and upkeep in the engine department spaces and assist in any repair work as directed by the engineer in charge. Wipers shall also keep the unlicensed engine department toilet, washrooms, and quarters clean on ship's time, and two hours daily shall be allowed for this sanitary work.

STEWARDS DEPARTMENT

53. GENERAL DUTIES

Duties of the Steward's Department shall consist of the following general provisions, as and when requested. The hours of the Steward's Department shall be as specified in Section 62. If employees are requested to and do work in excess of eight hours on any day, or outside the specified hours, in the performance of these duties overtime will be paid.

53. CHIEF STEWARD

The Chief Steward shall be recognized as the head of the Steward's Department; he shall report to the Master and shall direct the work of the personnel employed in the Steward's Department. The Chief Steward likewise may do any work in the preparation of meals or other work which he may deem necessary for efficient operation of his department.

Duties:

1. Supervising the Steward's Department including the service of meals.

2. Responsible for receiving, checking, issuing and proper care of all stores and equipment belonging to Steward's Department.

3. Maintains necessary company records, takes full and accurate inventory of provisions at the end of each month.

4. Submits voyage requisitions and requisitions for a period of 30 days or more, including inventory as required by Beaumont office.

55. CHIEF COOK

Duties:

1. In charge of galley and its operation under Chief Steward's direction.

2. Assists Chief Steward in the preparation of menus.

3. Butcher all meats, fish and poultry.

4. Cook and serve all meals.

5. In the absence of Steward, carry out his responsibilities.

56. SECOND COOK

Duties: Work under the direction of the Steward, performing the following duties:

1. Preparation and baking of all breads, pies, desserts, cakes, hot breads, including dumplings, stewed fruits, pastries, etc.

2. Cook all vegetables and make salads and prepare night lunches.

3. Assist Steward in proper stowage of refrigerated spaces when stores are received and proper care of same. Also handling of dry and sundry stores.

4. Assist in upkeep of cleanliness in galley, including ranges, ventilators, refrigerator, paint work in galley, working tables, drawers and use of insecticides. Clean and safe upkeep of all galley equipment, and assist Steward to make ice cream.

5. In the absence of the Chief Cook, he will assume the Chief Cook's responsibilities. The Second Cook is to care for the interior of the bake ovens and keep same clean. He is to assist in serving all meals.

57. GALLEYMAN

Duties:

1. Keep ventilators and acreens clean.

2. Wash all galley utensils and clean galley, including cleaning of tables, drawers, and washing of paint work. Clean butcher shop and butcher's utensils; use of insecticides.

3. Clean refrigerator boxes and assist in the proper care of fruits and vegetables.

4. Clean and prepare all vegetables and prepare all cold drinks.

5. Draw galley linen and supplies from linen locker and return soiled linen to linen locker.

6. Draw stores for galley from refrigerated spaces and storerooms upon daily requisition approved by Chief Steward.

7. Remove trash and garbage from galley and clean garbage cans.

* 8. Assist in handling food stores and dry and sundry stores.

9. Keep stairways adjacent to storerooms and refrigerators in clean, safe condition.

10. Clean storerooms and stock stores.

58. OFFICERS' SALOON MESS

Duties:

1. Serve all meals in Officers' messroom.

2. Prepare all fruits for table, such as citrus fruits or melons.

3. Responsible for defrosting and cleaning of saloon refrigerator, cleanliness of saloon gear and equipment and safety and upkeep of same.

4. Wash dishes, glassware and silverware.

5. Report to Chief Steward necessary replacements of gear.

6. Set up Officers' table and clear away after each meal, scrubbing pantry deck after breakfast and sweeping up after each meal.

7. Draw necessary linen for Officers' messroom and return soiled linen to locker.

8. Draw stores and utensils on requisition approved by Chief Steward.

9. Dispose of trash and garbage, emptying and scrubbing out garbage cans after each meal.

10. Set out night lunches.

11. Assist in handling stores and linen.

12. Clean brass, wash paint work in his section. Use insecticides.

13. Maintain and clean 3rd Assistant Engineer's and Steward's rooms.

14. Sweep passageway on starboard side.

59. CREW MESSMAN

Duties:

1. Serve all meals in crew messroom.

2. Prepare all fruits for table, such as citrus fruits or melons.

3. Responsible for defrosting and cleaning crew messroom refrigerator, cleanliness of crew messgear and equipment and safety and upkeep of same.

4. Wash dishes, glassware and silverware and messroom gear.

5. Report to Chief Steward necessary replacement for all gear.

6. Set up and clear away after each meal, scrubbing and sweeping up after each meal.

7. Draw necessary linen for crew messroom and return soiled linen to linen locker.

8. Draw stores and utensils on requisition approved by Chief Steward.

9. Dispose of trash and garbage, emptying and scrubbing out garbage cans after each meal.

10. Set out night lunches.

11. Assist in handling of stores and linen.

12. Clean brass and paint work in his section; use insecticides.

13. Wax and polish decks.

14. Maintain and clean crew's lounge.

15. Sweep passageway on port side.

60. UTILITYMAN

One or more employees of the steward's department not engaged in the preparing and serving of food shall be rated as utilitymen.

Duties:

1. Maintain and clean all Officers' living quarters and all spare rooms.

2. To wash all paint work, clean and wax Officers' lounges, polish all brightwork, and to perform general cleaning work.

3. To clean refrigerator rooms, clean the toilets and bathrooms except those of firemen, oilers and sailors.

4. Draw all necessary linen from Chief Steward and return all soiled linen to locker, help count and bag linen.

5. They may be assigned to carry a food tray to the bridge, serve meals to pilot, Master and sick employees.

61. GENERAL

* No overtime will be paid for the preparation and serving of regular meals within the regular hours; if meal times are varied working hours will be adjusted accordingly.

Members of the Steward's Department shall not be required to prepare and serve other than three regular meals. They shall prepare night lunches for the watches.

Members of the Steward's Department shall place stores and supplies in the storeroom and refrigerator, and shall assist, when required, in carrying stores from the main deck to the storeroom.

* Whenever the personnel on any vessel, exclusive of Steward Department personnel, exceeds 29 two utilitymen will be carried.

No member of the Steward's Department shall be required to serve coffee or meals in the engine room, nor shall they be required to enter the engine room at any time. Upon order of the Master they may be required to serve coffee or meals on the bridge

* 62. WORKING HOURS

The working hours of Steward Department personnel shall be as follows:

Chief Steward - eight hours a day in a spread between 6:15 a.m. and 6:15 p.m.

Chief Cook - 7:00 a.m. to 12:30 p.m. and 3:30 p.m. to 6:00 p.m.

Second Cook - 6:15 a.m. to 10:00 a.m., 11:00 a.m. to 1:00 p.m. and from 4:00 p.m. to 6:15 p.m.

Galleyman - 6:15 a.m. to 10:00 a.m., 11:30 a.m. to 1:30 p.m. and from 4:00 p.m. to 6:15 p.m.

Officers Saloon Mess - 6:30 a.m. to 10:00 a.m. 11:00 a.m. to 1:15 p.m. and from 4:00 p.m. to 6:15 p.m.

Crew Messman - 6:30 a.m. to 10:00 a.m., 11:00 a.m. to 1:15 p.m. and from 4:00 p.m. to 6:15 p.m.

Utilityman - 6:30 a.m. to 10:00 a.m., 11:00 a.m. to 1:15 p.m. and from 4:00 p.m. to 6:15 p.m.

63. CHIPPING, PAINTING, SCALING

Members of the steward's department shall not be required to do chipping, scraping, or painting, nor shall they wash paintwork requiring staging.

64. CARRYING STORES AND LINEN

Members of the steward's department shall not be required to carry stores or linen from shore to vessel or from vessel to shore.

65. REFUSE COMPARTMENTS

In port all refuse compartments shall be located convenient to the galley.

Effective August 1, 1971

	Starting Rate	Six Months In Co.	One Year In Co.	Two Years In Co.	Three Years In Co.	Five Years In Co.	Ten Years In Co.
Bos'n	$702.00	$712.35	$724.00	$746.01	$768.01	$790.03	$812.02
Able Seaman	538.95	546.45	555.21	571.47	587.72	603.98	620.24
Ordinary Seaman	423.01	429.27	436.76	450.53	464.28	478.04	491.80
AB/DM	591.99	601.06	610.10	628.24	646.36	664.49	682.60
OS/DM	479.24	487.01	496.07	512.90	529.74	546.56	563.40
Pumpman/ Machinist	730.27	740.61	752.27	774.29	796.16	818.19	840.30
ERM	673.71	682.78	693.12	712.57	731.99	751.41	770.82
Auto Oiler	631.76	640.51	648.00	665.52	683.02	700.53	718.03
Oiler	606.98	615.73	623.24	640.75	658.25	675.76	693.26
FWT	538.95	546.45	555.21	571.47	587.72	603.98	620.24
Wiper	479.24	487.01	496.07	512.90	529.74	546.56	563.40
Steward	757.19	768.44	779.70	802.21	824.72	847.23	869.74
Chief Cook	652.05	660.80	670.80	689.56	708.31	727.09	745.84
Second Cook	559.43	566.93	575.69	591.95	608.21	624.47	640.72
Galleyman	437.88	444.13	451.63	465.39	479.15	492.90	506.66
Messman/ Utilityman	423.01	429.27	436.76	450.53	464.28	478.04	491.80

A monthly payment at the rate of $7.50 as a clothing allowance to each of the unlicensed personnel is included in the foregoing wage schedule.

Effective August 1, 1970

	Starting Rate	Six Months In Co.	One Year In Co.	Two Years In Co.	Three Years In Co.	Five Years In Co.	Ten Years In Co.
Bos'n	$662.26	$672.03	$683.02	$703.78	$724.54	$745.31	$766.06
Able Seaman	508.44	515.52	523.78	539.12	554.45	569.79	585.13
Ordinary Seaman	399.07	404.97	412.04	425.03	438.00	450.98	463.96
AB/DM	558.48	567.04	575.57	592.68	609.77	626.88	643.96
OS/DM	452.11	459.44	467.99	483.87	499.75	515.62	531.51
Pumpman/ Machinist	688.93	698.69	709.69	730.46	751.09	771.88	792.74
ERM	635.58	644.13	653.89	672.24	690.56	708.88	727.19
Auto Oiler	596.00	604.25	611.32	627.85	644.36	660.88	677.39
Oiler	572.62	580.88	587.96	604.48	620.99	637.51	654.02
FWT	508.44	515.52	523.78	539.12	554.45	569.79	585.13
Wiper	452.11	459.44	467.99	483.87	499.75	515.62	531.51
Steward	714.33	724.94	735.57	756.80	778.04	799.27	820.51
Chief Cook	615.14	623.40	632.83	650.53	668.22	685.93	703.62
2nd Cook	527.76	534.84	543.10	558.44	573.78	589.12	604.45
Galleyman	413.09	418.99	426.07	439.05	452.03	465.00	477.98
Messman/ Utilityman	399.07	404.97	412.04	425.03	438.00	450.98	463.96

A monthly payment at the rate of $7.50 as a clothing allowance to each of the unlicensed personnel is included in the foregoing wage schedule.

ARTICLE III
WAGES

*66. MONTHLY WAGE SCHEDULE

Effective November 1, 1969

	Starting Rate	Six Months In Co.	One Year In Co.	Two Years In Co.	Three Years In Co.	Five Years In Co.	Ten Years In Co.
Bos'n	$624.77	$633.99	$644.36	$663.94	$683.53	$703.12	$722.70
Able Seaman	479.66	486.34	494.13	508.60	523.07	537.54	552.01
Ordinary Seaman	376.48	382.05	388.72	400.97	413.21	425.45	437.70
AB/DM	526.87	534.94	542.99	559.13	575.25	591.40	607.51
OS/DM	426.52	433.43	441.50	456.48	471.46	486.43	501.42
Pumpman/ Machinist	649.93	659.14	669.52	689.11	708.58	728.19	747.87
ERM	599.60	607.67	616.88	634.19	651.47	668.75	686.03
Auto Oiler	562.26	570.05	576.72	592.31	607.89	623.47	639.05
Oiler	540.21	548.00	554.68	570.26	585.84	601.42	617.00
FWT	479.66	486.34	494.13	508.60	523.07	537.54	552.01
Wiper	426.52	433.43	441.50	456.48	471.46	486.43	501.42
Steward	673.90	683.91	693.93	713.96	734.00	754.03	774.07
Chief Cook	580.32	588.11	597.01	613.71	630.40	647.10	663.79
2nd Cook	497.89	504.57	512.36	526.83	541.30	555.77	570.24
Galleyman	389.71	395.27	401.95	414.20	426.44	438.68	450.92
Messman/ Utilityman	376.48	382.05	388.72	400.97	413.21	425.45	437.70

A monthly payment at the rate of $7.50 as a clothing allowance to each of the unlicensed personnel is included in the foregoing wage schedule.

67. WAGES ON PROMOTION OR DEMOTION

If during the voyage, a member of the unlicensed personnel is assigned to another rating higher than his own, he shall receive the higher rate of pay during such assignment and his hours shall become the hours of the new assignment. If he is assigned to a lower rating through no fault of his own, there shall be no reduction in wages or overtime rate for the remainder of the voyage and his hours shall become the hours of the new assignment.

ARTICLE IV
GENERAL OVERTIME PROVISIONS

* 68. OVERTIME POLICY

The Company will continue its policy of paying cash overtime at the contract rate for authorized work performed in excess of eight hours per day and/or 40 hours per week, at sea and in port. The contract overtime rate shall be as follows:

* 69. OVERTIME RATE

The overtime rate applicable to all authorized work performed in excess of eight hours per day and/or 40 hours per week, at sea and in port shall be:

	Effective Nov. 1, 1969 Per Hour	Effective Aug. 1,1970 Per Hour	Effective Aug. 1,1971 Per Hour
Bos'n	$ 4.51	$ 5.25	$ 6.08
Able Seaman	3.46	4.03	4.67
Ordinary Seaman	2.71	3.16	3.66
AB/DM	3.80	4.43	5.13
OS/DM	3.08	3.59	4.16
Pumpman/Machinist	4.69	5.47	6.32
ERM	4.33	5.05	5.84
Auto Oiler	4.05	4.73	5.48
Oiler	3.90	4.54	5.25
FWT	3.46	4.03	4.67
Wiper	3.08	3.59	4.16
Steward	4.86	5.67	6.56
Chief Cook	4.19	4.88	5.64
2nd Cook	3.59	4.19	4.85
Galleyman	2.81	3.27	3.80
Messman/Utilityman	2.71	3.16	3.66

70. PENALTY TIME POLICY

The Company shall pay Penalty time payments in cash under circumstances to be specified in this agreement. Penalty time shall be paid at the rate of one hour at the contract penalty time rate for each hour of work performed under the specified circumstances. The contract penalty time rates for the term of the agreement shall be as follows:

Effective November 1, 1969, the penalty rates shall be:

1. Where the starting rate as of 11/1/69 is $624.77, or more a month $2.86

2. Where the starting rate as of 11/1/69 is $479.66, or more a month but less than $624.77 $2.80

3. Where the starting rate as of 11/1/69 is $376.48, or more a month but less than $479.66 $2.18

Work to be compensated at the Penalty Rate shall be as designated in the following sections in the Agreement:

79. Linen Change
84. Cleaning Vent Trunks
86. Shifting Ship
87. Carrying Stores
90. Washing Clothes
91. Garbage
99. Working Aloft
102. Washing Clothes
104. Serving Extra Persons
106. Extra Lunches or Meals
107. Stowing Stores
108. Cleaning Meat and Chill Boxes
109. Cooking Ashore
115. Port Overtime - Watchstanders
116. Port Overtime - Dayworkers
117. Port Overtime - Stewards Department
118. Port Overtime - Albany Trade
119. Port Overtime - Boston/Quincy Trade

71. TANK CLEANING POLICY

The Company will continue its policy of paying cash compensation for Tank Cleaning and certain other types of work as specified in the agreement. Such work shall be compensated in cash at the contract Tank Cleaning rate.

Effective November 1, 1969, and for the term of the agreement, the Tank Cleaning rate shall be:

1. On watch weekdays between 0800 and 1700 $2.80
2. Off watch weekdays between 0800 and 1700 $4.20
3. On or off watch weekdays between 1700 and 0800 $4.20
4. On or off watch Saturdays,Sundays and Holidays $5.60

Work to be compensated at the Tank Cleaning rate shall be as designated in the following sections of the Agreement:

81. Spray Painting
83. Tank and Bilge Cleaning, Strainer Boxes, Major Spills
88. Shifting Butterworth Machines
89. Chipping and Scaling in Tank Trunks
93. Longshore Work
94. Explosives
95. Boiler and Water tanks
96. Tank Tops
97. Work Below Floor Plates
98. Cleaning Condensers

72. SATURDAYS, SUNDAYS, AND HOLIDAYS

Overtime shall be paid for all work done and watches stood on Saturdays, Sundays, and holidays at sea and in port.

73. MASTER'S AUTHORITY

Overtime shall in no case be worked without the prior authorization of the Master or person acting by authority of the Master.

*74. DRILLS, INSPECTIONS,SAFETY

Wherever practical, routine lifeboat and other emergency drills shall be held on Monday through Friday between the hours of 0800 and 1630.

Except for special drills required by a government official, overtime shall be paid to all men off duty or off watch for lifeboat and emergency drills held before 0800 and after 1630 on Monday through Friday and on Saturdays, Sundays and Holidays.

No overtime shall be paid for work in addition to the regular schedule in connection with inspections or examinations conducted by a government official, or emergency work required for the safety of the passengers, crew, vessel, cargo, another vessel in distress, or the saving of life. This paragraph shall not apply to annual inspection of the vessel.

75. OVERTIME COMMENCES

One member of the watch on deck shall be designated to call out the watch below and he shall be instructed to begin such call out one-half hour before the time required for the watch below to be on deck. He shall announce the time required to be on deck when calling the watch below and overtime shall commence fifteen minutes prior to the time given when called provided the employee is on deck at that time, otherwise overtime shall commence at the actual time the employee reports for duty and shall continue until the employee is released.

* 76. COMPUTING OVERTIME, PENALTY TIME AND TANK CLEANING TIME

Where overtime, penalty time or tank cleaning time worked is less than one hour, overtime, penalty time or tank cleaning time for one full hour shall be paid. Where overtime, penalty time or tank cleaning time worked exceeds one hour, the overtime, penalty time or tank cleaning time performed thereafter shall be paid in one-half hour periods, a fractional part of such period to count as one-half hour.

77. SIGNING OVERTIME

When overtime is worked the employee concerned shall sign the overtime sheet as soon as possible after completion of the work, which shall also be countersigned by the department head authorizing the work. If there is any question regarding the amount of overtime allowed, he shall at once follow the grievance procedure.

78. EXCHANGING OVERTIME

Except upon bona fide request of individual members of the unlicensed personnel, there shall under no circumstances be any exchange of time off for overtime worked or overtime worked for time off.

79. LINEN CHANGE

* One hour of penalty time will be paid to any man who does not get a clean linen change once each week.

* 80. NO PYRAMIDING OF PAYMENTS

Whenever overtime or penalty time or tank cleaning time are payable under one or more provisions of the agreement for the same work or the same period of time, the payments shall not be additive, i.e. there shall be no double payments or combinations of overtime, penalty time and tank cleaning time. However, under these circumstances the highest applicable rate shall be paid.

* 81. SPRAY PAINTING

When members of the unlicensed personnel are required to handle spray guns in painting, two men shall be used and each man shall be paid his tank cleaning rate for this work.

82. STORING SATURDAY, SUNDAY, HOLIDAY, OVERTIME HOURS

All members of the unlicensed personnel required to stand by to take stores on Saturdays, Sundays and holidays, and outside of their regular hours of work, shall receive overtime pay from the time they are required to stand by until released by the officer in charge. Men required to stand by may be released by the officer in charge at any time for any reason, but they shall receive overtime for at least one hour, if they have actually commenced to stand by prior to the order of release. While awaiting arrival of stores, men will be required to work.

83. TANK AND BILGE CLEANING, STRAINER BOXES, MAJOR SPILLS

Men entering tanks or cofferdams for installation work, repair work, or cleaning, or actually engaged in the removal of sludge, either on deck or in tanks, or men doing any of the aforementioned work in pump room bilges, or chipping, painting, or scraping in said pump room bilges, shall be paid the tank cleaning rates specified in

* Section 71 except for the Bosun who shall in all instances
* receive the equivalent of the highest rate of tank cleaning time being paid to any member of the crew with whom he is working. Cleaning spills on deck shall also constitute
* tank cleaning time under these provisions. A spill shall be considered to be a tank overflow, rupture of hose or pipe or a gasket blowout.

While engaged in the above work, no other overtime or
* penalty time shall be paid. The cleaning of strainer boxes is not to be considered bilge work.

84. CLEANING VENT TRUNKS

When employees are required to enter vent trunks beyond the cowling, mushroom or bulkhead for the purpose of painting, chipping, scaling or repairs they shall receive
* penalty time at their regular rate.

DECK DEPARTMENT

85. DOCKING AND UNDOCKING

All the time required for docking and undocking shall constitute overtime for all members of the deck department who perform this work outside their scheduled hours of duty.

86. SHIFTING SHIP

When the shifting of a ship takes less than five (5) hours between berths, docks or ports, all members of the deck department required to be on board shall be paid
* penalty time for all time off duty.

87. CARRYING STORES

In the event that ship's stores are not delivered within
* a thirty foot radius of the ship's side, penalty time shall be paid to members of the deck department so engaged in carrying stores to the thirty foot radius.

88. SHIFTING BUTTERWORTH MACHINES

Three men shall be used for the shifting of Butterworth machines. When this work is done between the hours of 5 p.m. and 8 a.m. at sea, three men shall be used from
* watch below and paid their regular tank cleaning rate. When this work is done in port, men on watch may be used
* and they shall be paid at their regular tank cleaning rate.

89. CHIPPING AND SCALING IN TANK TRUNKS

* Tank cleaning time shall be paid at the tank cleaning rates as specified in Section 71 to members of the deck
* department engaged in chipping or scaling in the tank's trunks.

* 90. WASHING CLOTHES

Four hours of penalty time shall be paid for washing clothes to each member of the Deck Department who is engaged in cleaning black oil tanks, black oil spills, or engaged in repairs in black oil tanks or enters unwashed clean oil tanks to effect repairs or remove sludge, syphon, or wipe down said tanks, for each passage in which this work is done.

91. GARBAGE

When members of the deck department are required to handle or dump large accumulations of garbage, they shall
* be paid at the penalty time rate.

92. 0400 - 0800 WATCH BREAKFAST HOUR

When members of the deck department are performing regularly scheduled overtime work which calls for assistance from the members of the 0400 to 0800 watch after their regular 0400 to 0800 watch has been completed this watch shall receive one-half hour for breakfast from 0800 to 0830 and they shall turn to at 0830 and overtime shall commence from 0800.

93. LONGSHORE WORK

In ports where there are no longshoremen available, members of the deck department may be required to drive winches for handling dry cargo, or handle dry cargo, and
* for such work they shall be paid the tank cleaning rate in addition to their regular monthly wages.

94. EXPLOSIVES

When required to work explosive cargo, members of the
* deck department shall be paid for such work at the tank cleaning rate. For the purpose of this Agreement, explosives shall consist of the following items: black powder, blasting caps, detonating caps, loaded bombs, dynamite, and T.N.T.. This does not apply to ammunition for the Armed Guard unless it is handled solely by the crew.

ENGINE DEPARTMENT

95. BOILER AND WATER TANKS

Members of the unlicensed personnel of the engine department when cleaning oil and domestic fresh water tanks, working in boilers on steam or fire side and main gear case shall receive the regular tank cleaning rate. Domestic water tanks shall include distilled, drinking, double bottoms, after peak, and deaerator surge tanks.

96. TANK TOPS

When members of the engine department are engaged in chipping, painting, or scaling tank tops located beneath the engine room or fireroom floor plates they shall be
* paid tank cleaning time at the regular rate.

* 97. WORK BELOW FLOOR PLATES

When members of the engine department are engaged in performing actual repair work to equipment located beneath the engine room and/or fire room floor plates, or chipping, painting, or scaling below the fireroom floor plates, they shall be paid the regular tank cleaning rate.

98. CLEANING CONDENSERS

When the inspection plates are removed from the condenser water boxes and members of the engine department are required to enter the condenser water boxes for cleaning, painting or scaling the inside of this equipment, they
* shall be paid tank cleaning time at the regular tank cleaning rates as prescribed in Section 71.

99. WORKING ALOFT

* All engine room personnel shall be paid penalty time whenever they are working aloft on the masts or king-posts.

100. SUPPER RELIEF

* One hour of overtime will be paid to each individual in the engine department when required to provide supper relief for the 4:00 to 8:00 watch.

101. OVERTIME PAYMENTS THROUGH MEAL HOURS

Overtime payment shall not be broken during the limited time allowed for the meal when engine room personnel are working pre-scheduled overtime and are released from such overtime work to partake of a meal.

When members of the engine department are performing regularly scheduled overtime work which calls for the assistance of the members of the 0400 to 0800 watch after their regular 0400 to 0800 watch has been completed this watch shall receive one-half hour for breakfast from 0800 to 0830, and they shall turn to at 0830 and overtime shall commence from 0800.

102. WASHING CLOTHES

Members of the engine department who are required to enter black oil tanks for the purpose of affecting repairs will
* be compensated for washing clothes as follows: No penalty time payment for less than two hours work in tanks; two
* hours penalty time for two to four hours work in tanks and
* four hours penalty time for more than four hours work in tanks.

103. RIGGING

Simple rigging, lashing, or hoisting in connection with engine room work shall be performed by engine room personnel. Complicated rigging, lashing, or hoisting, which requires skills above this shall be provided by competent persons other than engine personnel.

STEWARD DEPARTMENT

104. SERVING EXTRA PERSONS

* Penalty time shall be paid to members of the Steward Department, not exceeding five men, involved in the preparation and serving of extra meals under the following conditions:

* a. One hour of penalty time shall be paid to each of these employees for serving three to five persons in excess of the number of persons served in any one messroom.

* b. Two hours of penalty time shall be paid to each of these employees for serving six or more persons in excess of the number of persons served in any one messroom.

* c. Three hours of penalty time shall be paid to each of these employees for serving shore personnel required to be on board when transiting the Panama or Suez Canal.

105. ILLNESS

When a man is sick aboard vessel, his wages are not to be split. Work over eight (8) hours necessitated by the illness of a member of the steward department is to be compensated by overtime.

106. EXTRA LUNCHES OR MEALS

If on the order of the Master or officer in charge, lunches are served in addition to the three meals already provided for, or meals for members of the port staff are served at
* other than the regular hours, one hour's penalty time shall be paid to each man actually engaged in preparing and serving such lunches.

107. STOWING STORES

When members of the steward's department are required to stow stores away requiring more than fifteen minutes,
* they shall be paid penalty time in addition to their
* regular wages at the penalty time rate unless the vessel is not feeding aboard and steward's department personnel are not engaged in their regular duties.

108. CLEANING MEAT AND CHILL BOXES

When members of the steward's department are required to clean meat and chill boxes prior to receiving stores for a period of 90 or more days they shall be paid for such
* work at their regular penalty time rate.

109. COOKING ASHORE

When required to cook ashore, four members of the steward's department shall be assigned to carry food and utensils from and to the vessel, each of them to be compensated
* at the rate of one hour's penalty time for each meal served.

110. HOLIDAY MEALS

The Company recognizes that work in excess of eight hours per day is normally required in the preparation and serving of holidays meals on Thanksgiving, Christmas, and New Year's Day and is in accord with the payment of overtime for the extra work required in these instances.

111. CLEANING EXTRA ROOMS

The Company recognizes that there will be instances when persons not attached to the vessel will be using extra rooms when in port. When the cleaning of these rooms requires work in excess of 8 hours the members of the steward's department who do such work shall be entitled to overtime payment at the regular overtime payment rate for such work.

112. CLEANING GALLEY RANGES

Two members of the steward's department shall be required to clean galley ranges and when this work is done outside regular hours overtime shall be paid at their regular rate.

ARTICLE V
PORT TIME

113. PORT TIME DEFINED

a. Port time shall not commence in the case of a vessel anchoring because of fog or other impediments to navigation, awaiting tides or pratique.

b. Port time shall commence when a vessel anchors for the purpose of handling cargo, cleaning tanks, scheduled repairs, or when it is securely moored to a dock.

c. Port time shall commence when a vessel anchors provided the vessel is detained at anchor for more than twenty-four (24) hours awaiting a berth irrespective of whether pratique is granted, or undergoing emergency repairs. Launch service will be provided, when available, if permitted by government regulations.

d. Port time as described above shall apply when a vessel enters port under governmental direction provided the vessel remains in port for more than twenty-four (24) hours.

e. When moving vessel to another berth, dock or inland port, port time shall cease when standby is given, provided however, the period of moving vessel exceeds five (5) hours.

f. Port time shall cease when the order for standby is given at dock or anchorage, and vessel is proceeding to sea.

g. Every effort shall be made by the Company to post the sailing time as accurately as possible.

NOTE: Port time shall not apply to this section in any foreign rendezvous port while the vessel is at anchorage and shore liberty is restricted by governmental order.

ARTICLE VI
PORT OVERTIME

114. STANDBY STAFF

An employee assigned to the Standby Staff shall be kept on pay and subsistence at the rate of $1.20 ($1.60 in the case of Stewards) per day until he is assigned to a vessel. While awaiting assignment he may be given temporary duties to perform aboard a vessel.

When such duties are performed in excess of eight hours per day and on Saturdays, Sundays and holidays he shall receive overtime at the contract rate. Employees ordered by the Company to standby at a point more than 50 miles from their homes shall be given full subsistence.

115. PORT OVERTIME - WATCHSTANDERS

* When a vessel enters a port for the purpose of handling cargo penalty time shall be paid to a maximum of twelve hours (three successive watches) commencing at the end of the hour in which the vessel is finished with engines.

116. PORT OVERTIME - DAY WORKERS

* When a vessel enters a port for the purpose of handling cargo penalty time shall be paid to a maximum of four hours for normal work performed commencing at the end of the hour in which the vessel is finished with engines.

117. PORT OVERTIME - STEWARD'S

* When a vessel enters a port for the purpose of handling cargo penalty time shall be paid to each member of the steward's department for normal duties performed to a

maximum of four hours commencing at the end of the hour in which the vessel is finished with engines except when three meals are served between 0615 and 1815 six hours shall be paid.

* NOTE: When a vessel is in port on a Saturday and/or a Sunday and continues in port on Monday, penalty time as
* described in Sections 115, 116, and 117 will commence at 0000 hours Monday. This interpretation shall also apply when the vessel is in port on a holiday and continues in port the following day.

118. PORT OVERTIME - ALBANY TRADE

* Penalty time equivalent to the provisions of Sections 115, 116, and 117 shall be paid at Port Mobil from finished with engines to standby and at Tompkinsville Anchorage for the entire anchored period for vessels in the Port Mobil/ Albany or Tompkinsville Anchorage/Newburgh/Albany trade.
* Penalty time under this section shall not apply at Newburgh.
* Port penalty time shall apply at Albany commencing from finished with engines.

119. PORT OVERTIME - BOSTON/QUINCY TRADE

* Penalty time, equivalent to the provisions of Sections 115, 116, and 117 shall be paid for vessels in the Boston/ Quincy trade and shall apply at Boston and also at Quincy.

ARTICLE VII
TRANSPORTATION AND SUBSISTENCE

120. TRAVELING FOR EMPLOYMENT

* When traveling in the course of employment from one port to another, unlicensed personnel shall be paid regular wages while enroute and shall be provided with necessary transportation and subsistence except where subsistence is included with transportation. Subsistence shall be at the following rates:

Breakfast	$2.50
Dinner	3.50
Supper	4.50

When traveling overnight, a berth shall be provided.

Economy air transportation will be provided when available or reimbursed on basis of receipt, for travel in excess of 150 miles.

Transportation expense when presented for reimbursement must be supported by receipts except for cab fares of less than $5.00.

121. TRANSPORTATION - LEFT ASHORE

When an employee is left ashore at any port and when such employee would ordinarily be entitled to transportation under the law, the Company shall forthwith provide transportation back to the port of signing on and may utilize its own vessels for that purpose.

122. TRANSFER COMPANY CONVENIENCE

When an employee is transferred for Company convenience, he shall be provided with transportation and subsistence as
* itemized in Section 120. An employee assigned to the standby staff as a result of such transfer who is required to stand by at a point more than 50 miles from his home shall be entitled to subsistence as itemized in
* Section 123.

*123. NORMAL SUBSISTENCE

Subsistence where required in this Agreement or when employees are attached to a vessel and room and board are not furnished shall be paid for at the rates set forth herein unless specifically stated otherwise:

a.	In lieu of breakfast	$2.50
b.	In lieu of dinner	3.50
c.	In lieu of supper	4.50
d.	In lieu of quarters	10.50

ARTICLE VIII
VACATION-PAID LEAVE

*124. VACATION-PAID LEAVE RATE

Effective November 1, 1969, employees shall be entitled to vacation-paid leave at the rate of 104 days for 261 days of active duty aboard vessels or on standby as a result of transfer for Company convenience.

Effective August 1, 1970, employees shall be entitled to vacation-paid leave at the rate of 110 days for 255 days of active duty aboard vessels or on standby as a result of transfer for Company convenience.

125. OPERATING NECESSITY

It is understood by the Union that the Company can grant vacation-paid leave only at such time and places as do not interfere with the operating necessities of the service, and when employees are available to provide such relief. When an employee cannot be relieved at his normal time the Company will give him an explanation of the reasons therefore in writing.

126. SCHEDULING OF VACATION-PAID LEAVE

The vacation-paid leave plan will be administered in general on the basis of three months of active service on board vessels followed by a period of shore leave with pay. Employees shall be available for assignment at any time after 6 a.m. of the fourth day before expiration of vacation-paid leave. It is understood that an employee will be given a definite job assignment on the first day he is due for recall and should such job not materialize, he shall then be placed on standby until reassigned. Adjustment of Recalled Days shall be made in the next vacation-paid leave period and shall be in addition to the earned vacation-paid leave. Vacation-paid leave periods shall be at least thirty-four (34) days.

An employee going on paid leave may not return to active duty aboard vessels until one-half the time earned shall have been taken. If an employee has requested to be returned to active duty aboard vessels upon completion of one-half of his paid leave, the Company will endeavor to place him. Should the employee desire to have such unused portion of his paid leave added without pay to his next paid leave period, he shall so notify the Company in writing not later than the fourth day of such paid leave period. It is understood that there shall be no pyramiding of paid leave under this provision.

127. VACATION-PAID LEAVE AT TERMINATION

If employment is terminated after one (1) month of active service aboard vessels, payment for accrued vacation-paid leave shall be made; if terminated for any reason with less than one (1) month's service aboard vessels, no vacation-paid leave payment shall be made.

128. LEAVE OF ABSENCE

Employees reporting back after end of an approved leave of absence if not assigned within 5 days will be placed on pay and subsistence at the rate of $1.20 ($1.60 in the case of Stewards) while awaiting assignment to vessels and may be given temporary duties to perform.

This Agreement shall supersede and cancel all previous Agreements with respect to wages, hours of employment, working rules and other conditions of employment now in effect between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers this 18th day of November, 1969.

SOCONY VACUUM TANKER MEN'S ASSOCIATION
LOCAL 8-801 OIL, CHEMICAL and ATOMIC
WORKERS INTERNATIONAL UNION, AFL-CIO

Francis G. Avery
Donald H. Sanhueza
John D. Perrio
Theodore Nason

Maxwell M. Lackey
International Representative

MOBIL OIL CORPORATION
MARINE TRANSPORTATION DEPT.
GULF-EAST COAST OPERATIONS

John T. Knepper
L. A. Papich
W. J. Shanaghan

Supreme Court of the United States

NO. 74-1254

OIL, CHEMICAL AND ATOMIC WORKERS,
INTERNATIONAL UNION, AFL-CIO, ET AL.,

Petitioners,

v.

MOBIL OIL CORPORATION, ETC.

ORDER ALLOWING CERTIORARI. Filed October 6, 1975

The petition herein for a writ of certiorari of the United States Court of Appeals for the Fifth Circuit is granted.

"PLAINTIFF'S EXHIBIT 14"

DATE August 3, 1971

TO

C.C.

W. H. Taylor
Dallas

OCAW DUES

Please draw a check in the amount of $2,253.00 payable to the OCAW-IU, Maritime Local 8-801 and mail with the covering letter in the self-addressed envelope which is enclosed.

The check must be received by the Union not later than the 15th of the month.

Please debit Account No. 8-0309-041.

John T. Knepper

nd

encl.

August 3, 1971

cc: J. H. Gray
W. H. Taylor
OCAW General 3.70

Oil, Chemical and Atomic Workers
International Union
Maritime Local Number 8-801
Room 605
1 Beekman Street
New York, New York 10038

Gentlemen:

Enclosed is our check in the amount of $2,253.00 representing dues and initiation fees for all OCAW members with authorized dues deductions in force on July 31, 1971.

Dues from	261 members @ $8.00 ea.	= $2,088.00
Initiation fees from	11 members (new) @ $15 ea.	= 165.00
		$2,253.00

During July the following additions and deletions have been made to the list of OCAW members having dues deduction authorizations on file with us:

Additions (11)

J. Bourne (new)	G. Lyle (new)	G. Stinson (new)
D. W. Dickey (new)	R. O'Connor (new)	R. Vail (new)
H. Green (new)	R. Skiladz (new)	M. Whitworth (new)
J. Guidry (new)	J. Smith (new)	

Deletions (11)

V. Bonsaint (to lic.)	W. Hammett	A. Papazis
P. Breslin	G. Hill	A. Raham
D. Del Rosario	J. Hughes (to lic.)	A. Witte
N. Ferrer	J. Miller	

We have on this date 272 dues deduction authorizations from OCAW members.

Very truly yours,

J. T. Knepper, Manager
Gulf-East Coast Operations

nd